EPITOME

OF THE

LAWS OF NOVA-SCOTIA,

BY

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VOL. I.

HALIFAX, N. S.

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TO

THE HON. S. S. BLOWERS,

CHIEF JUSTICE,

AND

PRESIDENT OF H. M. COUNCIL.

THIS ESSAY

ON THE LAWS OF A COLONY,

OVER WHOSE TRIBUNALS

HE HAS LONG PRESIDED,

IS

BY HIS KIND PERMISSION,

INSCRIBED.

IN TOKEN OF RESPECT AND VENERATION

FOR HIS

PUBLIC SERVICES,

HIGH JUDICIAL QUALITIES, AND INFLEXIBLE INTEGRITY,

WHICH ARE INTERWOVEN WITH

THE AUTHOR'S

EARLIEST RECOLLECTIONS.

PREFACE.

Above 70 years' legislation has accumulated a mass of provincial enactments (contained in 3 large quarto volumes, down to 1826.) Since 1826, very many acts have passed. Much inconvenience has been felt in referring to them, as it requires an intimate acquaintance with their contents, to enable any one to distinguish those directly or virtually repealed, from such as remain in force. This difficulty has been experienced by professional men as well as others, although the small Index published by Chief Justice Marshall afforded some remedy. The variety of instances in which our Provincial acts and usages have altered the laws of England, and the uncertainty as to what English acts are or are not in force here, suggested to the writer the usefulness of a work in humble imitation of the Commentaries of Blackstone, retaining such English law as we have adopted, and adding under each head or chapter the substance of provincial enactments that belonged to it. (Under an impression of an analogous kind, an edition of Blackstone, with notes showing the changes of law in the United States, has been there published.) The author has been favored with a reading of the Commentaries of Mr. Kent on American law, and has found them of much service, in preparing this work. The materials from which he has produced this Epitome were so scattered and disjointed, that few can appreciate the fatigue attending it. He has had in constant view, to give the substance of *all* the provincial statute laws in the plainest terms, freed from

the technical language in which they were written, and to refer page by page and section by section—so that the original act could always be easily found when necessary.* He hopes in 4 or 5 small volumes to comprize the whole body of the provincial statutes on every subject, arranging them in a rational order, and connecting them in every chapter, with such English law as is in force here or necessary to be noticed. This first volume being chiefly statutes, has been less laborious in composition, but more so in revising and preparing for the press, than any other portion of the work. The writer has to request his readers to bear in mind, that the duties of a laborious profession have not allowed him to dedicate as much time and attention to this undertaking, as its importance deserved. He trusts it will be found useful notwithstanding, and he will publish the remaining volumes as rapidly as they can go through the press, having the manuscript of all nearly finished. He hopes at some future period, if the work in its present state is acceptable to the subscribers, to publish a more valuable and enlarged edition. He begs leave to return his thanks to the gentlemen of the Bar, the Magistrates, —the Agents for the work, and to his Subscribers in general, for their kind approbation and encouragement; which have stimulated him to persevere in his endeavors, and to several of his friends, for their liberality in the loan of law works required. The employment and improvement of mind, and the interest he has felt during these three years in this pursuit, are in themselves no small reward for his labor, and if its usefulness will bear any proportion to the exertion bestowed on it, he will have no cause to regret the occupation of so many solitary hours.

HALIFAX, April 2, 1832.

* The present volume it was found would not contain as many subjects as intended to be comprized in it, though 50 pages more than the 200 promised are added to it.

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EXPLANATION OF ABBREVIATIONS.

1. P. L. 200.—1st Vol. of the Province Laws, p. 200.

1. Car. 1. c. 1. s. 2.—1st year of King Charles the First, Chapter 1st, Section second.

G. 3. G. 4.—George the Third, George the Fourth.

1. W. & M.—1st William and Mary.

Hen. 2.—Henry the Second.

Ed. 3.—Edward the 3d

ch. c. Chapter. sec. s. Section. stat. st. statute. p. page. MS. Manuscript.

1. Chalm. Opin. 1 Ch. Op.—1 Chalmers' Opinions on Colonial Law.

T. R. Term Reports. Dougl. Douglas. Cowp. Cowper

1. B. C. 1. Bl. Com. 1. Blackst. Com. 1st Volume. Blackstone's Commentaries.

INTRODUCTION.

Sec. I.

On the study of the Law.

THE profession of the law has become, in every civilized country, the occupation of a distinct body of men. Long and undivided attention are required to attain proficiency in a science so extensive. With the progress of society, men's transactions in business become more varied, their relative rights and duties more numerous, and their disputes more complicated. The skilful Advocate, the enlightened Magistrate and the scientific Judge, are at length necessary to the well being of a community advanced in wealth and population. The principle of the division of labor is equally applicable to science and to manufactures. The professional student has to encounter a mass of reading that will afford him little leisure to pursue any studies not auxiliary to his main pursuit. The variety of learning with which he should be conversant, nay, intimately acquainted, before he can be competent to act with usefulness to his clients, on the multiplicity of occasions where his services are required, demands the devotion of all his mental energies.

A knowledge of the general principles of law, and of some particular branches, is sometimes necessary and very often useful, to those who are not looking to it as their profession. The Magistrate and the Legislator come alike under this remark. It is not necessary that they should be versed in the technicalities or familiar with the astute distinctions of the Barrister. Yet an acquaintance with the outlines of our free constitution, and a familiarity with the laws more immediately connected with their public duties, must add much to the facility and comfort of their proceedings. While the body of law reports, law abridgments, digests and even statutes at large, are more or less unintelligible to any but adepts in the profession, many talented writers in the mother country have employed themselves in the composition of treatises, in a style more suited to the ordinary reader. Where the use of technical expressions was unavoidable, they have defined and explained them, so as to render their works perspicuous and comprehensible to every well informed man.—Thus the statesman who would investigate the laws by which the principles of the British constitution are recognized and sanctioned, and the rights and duties of the subject in his political capacity pointed out and guarded, may trace them with ease, by the aid of the Commentaries of Blackstone the Essay of DeLolme on the Constitution, and other books of that description.—Many modern treatises on particular subjects are also written in a style of a clear and familiar kind. The works of Mr. Roberts on Wills and on Frauds—the essay of Lord Tenterden on shipping—of Mr. Holt, more recently, on the same subject—may be cited as examples. With a good treatise of this sort, and the aid of a law dictionary such as Tomlyn's, any intelligent person may, with moderate exertion, acquire a considerable knowledge, on any particular subject which he is required to understand. There is a description of legal knowledge very useful to

every man—to be aware of the ordinary formalities and rules respecting deeds, wills, bonds, promissory notes, &c. Correctness and caution, with reference to these, will save one often from the risk of being involved in the expense and misery of a lawsuit.

The reading of law books by those who have not made it a regular study, is very apt to mislead. A person not belonging to the profession (and the same caution will apply to a student in his first commencement) should read a law work with a good law dictionary at hand, and consult it whenever he has the least doubt as to the meaning of the author. The greatest difficulty arises from the technical meaning often affixed by law writers to words commonly used in other senses. Thus "common," "use," "limitation," "equity," "tenant," "fee," "entry," "infant," "action," "remainder," have a peculiar meaning attached to them when used as terms of law, very different from the ordinary sense in which they are applied.—Many words have several distinct meanings each, in law language; and the thorough comprehension of legal phraseology is one of the earliest and most perplexing obstacles to the student. It is perhaps very much for the same cause that a hasty reading of medical works is apt to deceive. The descriptions of the symptoms and stages of disease are often couched in language that requires much care and enquiry, to understand with precision.

It has been my study to render this work as plain and easy to readers in general, and as free from the peculiarities of style that make the law a sealed book to the uninitiated, as the nature of the subject and the brevity of the space would allow. I have done so, not only to make it more useful and acceptable to magistrates, persons of property, and business, &c. but with the hope that it might much facilitate the study of law in this province. Having

access only to works written expressly for English students, much of our time has hitherto been wasted in obtaining, by long and tedious research, an intimacy with the general character of the Provincial usages and statutes. I trust that this book will in a certain degree supply the deficiency, and if circumstances permit, I shall endeavor to make any future editions of it more complete and accurate than the first outline can be.

Few need to be apprized that a thousand volumes will hardly embrace the whole catalogue of those works, with which an accomplished jurist is expected to be in a greater or less degree conversant. Much error prevails however as to the quantity of reading, that is useful or necessary to the lawyer. I have seen it somewhere stated that he is expected to store his memory with the chief part of the contents of such a book as Viners' abridgement, which contains, I think, above 20 large folio volumes.—Even among the profession, the vain attempt is sometimes made, to commit to memory great numbers of decisions out of the Reports, and to print on the recollection the substance of heavy tomes like Coke Littleton, Bacon's Abridgment or Comyn's Digest. A thorough knowledge of the foundations and first principles of law, a general acquaintance with the best treatises, ancient and modern on particular subjects, and a careful investigation of the cases on every point that attracts the particular attention of the student, or young barrister, gradually form his mind to legal pursuits on a solid and consistent plan. He should have that knowledge of law language which may give light to all his researches in actual business. His mind will be a kind of index to the whole of the best collections that he has access to ; and by tracing the reason and the connection of every case and position he meets with, to their sources, in first principles of reason and justice, he must be better qualified at a short notice, to prepare an opinion—

an argument, and eventually a decision, than he would be if his memory had been burthened with the heterogeneous contents of very many folios.

A half-hours inspection of a large law library is almost enough to deter any young person from embracing such a profession; and even the nerves of those who have been inured to poring over black letter, and law-French, and, worse than that, law-Latin, will sometimes twitch with involuntary shrinking from the barbarous aspect of these Sibylline leaves. The motley and tasteless jargon, the obsolete dialect, the antiquated questions and rules, the puzzling contractions of the early Gothic type, and the mouldering dust, that unite in presenting impediments to the enquirer, seem to throw an impenetrable veil over the original features of our jurisprudence. But although the Law appears thus to wrap herself up in mysterious intricacy like the wisdom of ancient Egypt in its hieroglyphic character, or the Brahmin Science in its Sanscrit, yet the attentive pupil will discover, after a time, that this is not an affected concealment,—but an obscuration which the multiplied relations of society, and the slow and almost imperceptible growth of the science of law, through a period of above 20 centuries have produced. After some years of preparatory study are passed, (and passed not unpleasantly to an enquiring mind) the apparent mystery and confusion vanishes, and at length in the piles of ancient and modern law-writings, that he once viewed as a chaotic heap of incongruous and often absurd materials, to all appearance inextricably jumbled, he now perceives the repository of the ideas and experience of ages upon ages, collected originally from time to time, by men of learning and judgment,—arranged so well as to afford great facilities for investigation,—and illuminated by the genius and powerful understanding of many a celebrated name of no inferior grade of intellect. He finds the laws traced

upwards to their first principles in the nature of man, his social propensities, and his religious duties, and he discovers that their practical advantages or inconveniences, as applied to the daily occurrences of life, have been made the constant subject of assiduous enquiry. Nothing has been too profound or too minute for the observation of the diligent sons of the science. Age has borrowed from age and nation from nation the fruits of their judicial experience, each applying them to ameliorate and enlarge their own institutions.

In the practice of Nova-Scotia, as in other parts of North America, the Lawyer's business embraces the whole management of his Client's affairs. He is in the first place called on for his opinion as to the propriety of commencing or defending a suit. If an action be resolved on, he is then, as the Attorney of the party, to prepare all the written proceedings by which it is conducted, and as an Advocate to debate the legal questions that may spring out of it before the Judges, and to speak on the merits and facts of the cause to the Jury. In the variety of Courts, from the highest to the lowest, he is called on as business arises to advise his clients, draw up their papers, or declaim in their behalf. We find the Colonial Lawyer at one moment pleading before the Governor and Council, and perhaps the next, defending a trivial assault at the Sessions, or seeking to recover for his client a small debt of 6 or £8 in the Summary Court. One day he is pleading at the Chancery Bar, the next probably at that of the Vice Admiralty, or before the Commissioner of Escheats.

This is not all, for his practice also embraces Conveyancing, and he even acts in the capacity of a Notary Public. All these avocations he must pursue as occasion presents, or he would not be able to retain business. In England the principle of division of labor has been so far

applied in this respect, that the Counsellor and the Attorney, the Barrister, the Special Pleader, the Equity Lawyer, the Civil Lawyer and the Conveyancer, are distinct occupations; all of which must at times be followed by one and the same person in the Colonies, and generally, I believe, throughout the United States also.

It is a singular proof of the elasticity of the human mind, and its capacity of being improved by constant employment, that our professional men, who are actively engaged in all these duties, and have scarcely a day of full leisure in the year, are so often successful in attaining the cultivated understanding and the genuine eloquence, that could hardly be looked for under the disadvantages of a provincial education and limited sphere of action.

The Student of Law, in Nova-Scotia, if possessed of a degree from a College, must serve 4 years in the office of an Attorney, after which, if otherwise qualified, he is fully admitted to the Bar. If he has not obtained a degree, he must serve 5 years clerkship, after which he is admissible as an Attorney, and within one year after as a Barrister.—He must be of the age of 21 years, and must pass examination before a Judge and two Barristers, before he can obtain either admission; and indeed he will not be permitted to commence his study regularly, until proper enquiries have been made as to his education and habits. Students generally begin to serve their time from 16 to 18 years of gae, and are admitted to the Bar at 22 or later. Many in the Colonies who are destined to the profession, have cause to regret, that they are first hurried from school to an office, and again hurried into practice by the force of circumstances, without having enjoyed the opportunity of sufficient time to mature their reading, so as to give them ease and satisfaction in their progress at the bar.

That an university education is of advantage to the

diligent youth, in our profession must be admitted.—Yet the young gentleman, who has had this superior access to the cultivation of his mind, should be careful, on his entering the study of the law, not to overrate its importance so much, as to abate his assiduity in legal enquiry, or to trust to the classical acquirements he has obtained, as a substitute for industry in his profession. He must be aware, that, although an university course may polish and improve some of the faculties of the mind, yet the excitement and zeal of manhood, are usually required to develope the intellectual powers. The very best education cannot bestow intelligence or talents. They are originally the gift of Providence.—Minds of every order may by suitable training, be prepared and qualified to assume their station, and perform their allotted parts in society; but the level of the understanding cannot be raised or depressed in any very great ratio, by the processes of education.

The young collegian is not to expect, that any precocity of genius evinced in scholastic pursuits, will in the world be accepted in lieu of the habits and acquirements of a man of business, such as a colonial lawyer, may emphatically be called. His sense of native mental powers, should induce him to apply himself with more energy, so that the bud of early promise, which he has exhibited at school or the university, may be followed by the fruits of honorable reputation and usefulness in life. Let him not in the pride of classic lore, undervalue the most minute or humble departments of his profession. While his learning may be an ornament, and perhaps give grace and intensity to his eloquence, yet it is rather a holiday garb; while method and accuracy in things which appear trivial are essential and indispensable, to success in any profession.

Those who enter upon the study without the benefit of a college education, should be cautioned against the in-

dulgence of an opposite error. They should guard against any impressions, that would lessen in their estimation the value of learning. Instances occur of men who have become eminent in the learned professions, without having been members of any university; but far from affording a foundation for any general rule, they must be looked on as exceptions. It will invariably be found that they were possessed of superior industry and talent; and, by the process natural to ardent and enquiring minds, by the force of incessant application, had mastered more copious erudition, than persons of moderate ability could have attained under the most systematic instruction. If they have sometimes appeared wanting in the graces of eloquence, or in polish of style, the deficiency has been more than compensated by the superior powers of memory and abstraction, acquired in the progress of self-education.

It is then incumbent on this class of students, to allow no occasion when they may add to their limited stock of learning, to pass by unimproved. They, above all others, should avoid a taste for frivolous and desultory reading, and endeavour to confine themselves to the perusal of the best authors. A thorough knowledge of the English language, a familiarity with its early writers of celebrity, an acquaintance with the chief features of the history of the mother country, are so pleasing in the pursuit, and so valuable to the lawyer in every part of the British dominions, that the young student of law, who omits to improve his mind in this way, may be regarded as culpably negligent. The Latin and French languages should, if possible, be perfectly understood by the lawyer, as he will thus be materially aided in the scientific researches of his profession. The writings of Cicero and Quinctilian, should be well known to him, and the orations of Demosthenes, and Chatham, Walpole, Fox, Burke, Sheridan, and Canning, Curran, and Erskine, should not escape his vigilance.

The commencement of legal study at an early age, even at 14 or 15, is a commendable plan, when it is not made to interfere with the acquirement of other knowledge besides that which is merely professional. An early acquaintance with legal proceedings and principles is of the highest value to the future lawyer. Legal ideas become thus almost a part of his nature. But if the human mind, at so early a period, be confined to one science, and kept until manhood forcibly bent into this one solitary channel of study, we must calculate on its becoming narrow, and full of the peculiar prejudices of its *caste*. Varied reading, and intercourse with well informed persons engaged in different pursuits, has the effect of enlarging the scope of the young and plastic mind. The student, whose information is limited to law reading alone must have his notions, even on law principles, obscure, while one more liberally versed in different branches of science and literature, will have a light reflected from his other attainments, to aid him in his legal enquiries.

In the Colonial practice it is necessary that the student should be made acquainted with the books and rules of attornies' practice, and be tolerably versed in them before he enters into any very profound study of legal principles. As to the course of professional reading, I have seen several treatises, but none exactly applicable to the circumstances of a Colonial student. Hoffman's Legal Study, an American work of reputation, is the best I have met with; and it should be read carefully by every student. I have subjoined a list of books suited to the perusal of a student in this province.

I should recommend to a student an attendance on all the Superior Courts when legal arguments, or very important trials take place. But I do not think it worth his while to attend the Courts much, until he has served two

or three years in the office; and his duties in the office should always be held paramount to any curiosity that may lead him away from it. When he has time, it is desirable that he should trace the law in the Reporters on any question of interest that comes to his notice. I do not think it is prudent for students to take notes of law arguments, as it demands more experience and reading than they usually possess to take them with accuracy, or derive any benefit from them. But I am aware there are exceptions to this rule, and when a student is competent, his industry thus applied must be highly creditable to him.

It is to be remarked that it is not by a quantity of pages, or a variety of subjects hastily passed over, that real information is ever gained. If that which is perused be not fully comprehended and to a certain extent retained in the memory, the time devoted to reading may be accounted a loss. In law reading it is especially desirable that every thing should be understood and the principles and reasoning remembered. The student, at his outset, should not pass from one chapter to another, until he has thoroughly and distinctly found out the meaning of his author; and (where it is not inconvenient) has traced the chief authorities referred to by the author, as these often elucidate a difficult point or modify a proposition.

The advice and instruction of the barrister under whose care he pursues his professional study, are invaluable to the student, and he should ensure them, by his diligence in business entrusted to him, and by the deferential respect due from youth to age and experience.

It is a truth, that should be fully explained to every young person about to enter on the study of law; that it is one which promises neither its profits, nor its honors, ex-

cept as the reward of much unwearied industry and privation. The state of the profession in this part of the world warrants no expectation that its demands will become less imperious on the assiduity and exertion of its followers. In the race of competition the lover of his own ease must be left far behind—among the numbers who press eagerly forward, he who loiters on the way and wastes the precious moments he should devote to self improvement, cannot expect to bear away a prize. At the same time, the assistance which a student may now obtain in his pursuits is much greater than it was even a very few years ago. The Library of the Bar offers a store of legal reading, almost unlimited, to the student who can avail himself of it by a residence in town, and books and professional as well as literary society are now comparatively easy of access in most parts of this Province.

Young persons become sometimes so fond of reading that it induces bodily indolence and consequent ill health. This should be carefully avoided, as the powers of the mind are sure to suffer under such mistaken habits. Regular exercise, the avoiding a close and overheated atmosphere, with occasional journies in the country in the fine weather, will prove powerful auxiliaries in strengthening the bodily and mental faculties, as well as ensuring that robust health, more necessary to a lawyer than many persons suppose.

It may be suggested that the student who wishes to make a certain and uninterrupted progress in his profession, should make it a rule never be broken through, to read, on every *week* day a certain portion at least of some law book of repute. A habit thus established will be found of great efficacy in preventing the disgust young persons occasionally feel for serious reading, and which increases from day to day, if it be indulged. It is

astonishing how much may be eventually accomplished by even the attention of a half-hour or a quarter, regularly followed up every day. In fact while the mind is yet unformed, no minute should be lost from some useful or honorable pursuit, as minutes, then well employed, will turn to more account than hours, or perhaps days of after life.

Course recommended to Students in Nova-Scotia.

Part 1.—Blackstone's Commentaries.
Selwyn's Nisi Prius.
Phillips on Evidence.
Tidd's Practice.

2.—Newland's Chancery Practice.
(1st volume.)
Maddox on Chancery.
(1st vol. & a few chapters of the 2d.)

Jones on Bailments.
Toller on Executors.
Adams on Ejectment.
Comyn's Landlord and Tenant.

3.—Doctor and Student.
Coke on Littleton,
(part of it only.)
Saunders' Reports.
Roberts on Wills.
Sugden on Vendors.

4.—Comyn on Contracts.
Roberts on Frauds.
Holt on Shipping.
Leach's Crown Law.
Archbold's Criminal Pleading and Evidence.

Holt's Law of Libel.

5.—Brown's Civil and Admiralty Law.

N. B.—This list includes about 33 volumes. Some of them merit the closest study. It is desirable that the Student for the first year or so should read with reference to a law dictionary only, for explanation. After that period, he will turn with greater advantage to the leading cases quoted by the author he is reading, which he should consider very attentively. I would recommend a 2d and a 3d reading of Blackstone's Commentaries, at intervals of one or two years,—the first time referring to a law dictionary when necessary,—the second time referring to, and reading the chief acts of the province, as they bear upon the subjects in the Commentaries,—the third time reading the leading cases referred to. The foregoing list of books may be much enlarged or curtailed according to the circumstances and the method of study. No course can answer equally well for every individual; and judicious advice should be sought and followed in so important a matter; and when he can obtain the direction of the Barrister with whom he studies, he will find it more beneficial than any course of reading that can be thus framed. The order in which I have placed the books on the list is, such as I should be inclined to recommend generally to our students in Nova-Scotia. It will be of great service to make a written analysis of every book read, on a small scale.

SECTION II,

Of Laws in General.

Law may be defined as a rule of action by which a reasonable and free agent is directed to conduct himself, by a superior authority. The almighty has given to the different parts of his creation, certain impulses, whereby their movements are irresistibly controlled. These are sometimes called laws, and we speak of the law of gravitation and of the law of attraction, but it is by a metaphor, as the natural and proper meaning of the word is a rule the governed being may obey or disobey, and which is enforced by the sanction of punishment or reward.

The will of the Almighty is the fountain of natural law, that teaches man justice, innocence and benevolence. This law is originally implanted in the conscience, and reason is given as its interpreter. The perverse inclinations of men have often partially obscured it; but, to counteract this fatal tendency, Providence has, by special revelation of the holy scriptures, brightened and illuminated the pages of the inward monitor, and given additional and more distinct rules of conduct, than reason and conscience unassisted could supply. It has also given a clearer vista

of reward to virtue, and thrown a deeper gloom over the inscrutable abyss of intellectual darkness and misery, whither wickedness and folly conduct so many of the human race.

It is not our present purpose to dwell upon these precepts of religion and morals. Concerning them, one day calleth out to another, and to illustrate them, wisdom crieth almost unregarded in the streets and thoroughfares of life, and sendeth her still small voice to accompany us to the most remote solitude. Suffice it to observe, that on these must be built all that is good or valuable. The laws of man must be conformable and subservient to their rules, otherwise they cease to be laws, and can have no just claim to obedience: for those of his creator are superior, and cannot be abrogated or controlled by any power, however elevated.

The laws instituted by men are properly divided into the *law of nations*, and *municipal law*. The former consists of the usages of civilized states, their compacts and treaties. The latter is also sometimes called civil law, and is well defined by Justinian's Institutes: "*Quod quisque populus ipse sibi jus constituit, id ipsius proprium civitatis est, vocaturque jus civile, quasi jus proprium ipsius civitatis.*" Inst. 1. 2. 1. "That law which each people has established for itself, which is peculiar to the state itself, and therefore called civil law." A great part of these laws consist in the declaration and sanction given by every nation to the principal laws of morals. Thus every where murder, adultery, theft, and such crimes, are punished by express laws; and the violation of contracts, and direct injuries done by one man to another, are also the subjects of legislation. But nations differ from each other in the mode of trial and of punishment. Various races living under one government may be governed by the same laws, and again the

different Provinces of the same nation and government may be governed by codes which are distinct from each other.

The first principles of law are reduced by Justinian into three precepts: "*Honeste vivere, alterum non laedere, suum cuique tribuere.*"—"To live honorably, to injure no one, and to give to every one his due." The same sense is implied in the divine command of our Saviour: "To do unto others, as we would they should do unto us."

In barbarous nations unacquainted with written laws, usages adopted to enforce their rude notions of justice supplied the place of law. As regular governments arose, the next step was the formation of a written code. In the infancy of mankind each tribe obeyed some individual as its sovereign* in matters of religion, war and civil government; and from the more eminent rulers of this description the first permanent laws appear to have originated. Such were Numa,—Solon,—Lycurgus. In progress of time, their institutions became insufficient, or were thought capable of improvement according to the changes in the condition of society. Society assuming new political forms by the introduction of assemblies of the elders, or of the free citizens of each state to deliberate on its interests, the *legislative power* came into existence, by which laws have been from time to time abrogated and amended, and new laws added. This power has always been held by those who

* "*Principio rerum, gentium, nationumque imperium penes reges erat quos ad fastigium hujus Majestatis non ambitio popularis, sed spectata inter bonos moderatio provehebat. Populus nullis legibus tenebatur: arbitria principum pro legibus erant.*" Justin. Hist. L. 1. ad initium. In the earliest times the government of nations was exercised by kings, who attained to this elevation not through courting popularity, but from the moderation of their conduct recognized by worthy men. The people had no fixed laws, for the decisions of their princes served instead of law."

exercise the sovereign and supreme authority among a people—and the distinctive characteristics in modern times of free and despotical governments are, that in free states the legislative authority is wholly or in a great measure exercised by some representative body elected by the people at large, while in despotic governments some particular individual, or family, or class of individuals, exercise supreme legislative functions, independent of any efficient control or interference on the part of the nation at large.

The legislative power of the mother country is exercised by Parliament, which consists of three branches, the King, the House of Lords, and the House of Commons. The crown is hereditary, but limited by act of parliament. The House of Lords are hereditary possessors of their seats, except the Spiritual Lords, who hold them by virtue of their offices, or rather of the baronies attached to the lands belonging to their sees. And the representative Peers for Ireland and Scotland are also partly hereditary and partly elective, being noblemen by birth, but chosen for life or a term of years by the body of nobles of their own countries, to sit in the Upper House. The Commons are chosen by the freeholders of counties and the freemen of cities and boroughs, to represent the popular or rather the democratic interests in the great national council. Whatever law is passed by the concurrence of these three branches is conclusively binding on the nation, and the tribunals of justice are not, by our constitution, empowered to enter into any consideration of the justice or expediency of acts of parliament, the parliament being considered itself as a tribunal of justice, and as such paramount and superior to all others in the empire, who therefore are not at liberty judicially to doubt or disobey its decrees. This rule, however does not prevent any individual from canvassing the propriety of acts of parliament, or from petitioning for their repeal, if he preserve, in so doing, the respect due to so august a body.

It is only a limitation of the functions of ordinary judges, and is not intended to convey any notion of the infallibility of the Legislature. The same rule is adhered to in these Provinces, though in the neighboring United States the judges may consider whether an act of congress, or a state act, be conformable to the constitution.

A law may be considered as containing either expressly or by implication four parts. *First* a *declaration* of the rights it intends to define and establish, or of the evils it intends to prevent or punish. *Secondly* a *direction* to the subject, as to the manner in which he is to observe those rights or to abstain from the commission of the wrongs in contemplation. *Thirdly* a *remedy* or mode of obtaining redress, or recovery of right where the law is infringed. *Fourthly* a *sanction* or penalty on those who transgress the prescribed rule.

A law may be called excellent, that in its declaration of what shall be considered right or wrong is founded clearly on the principles of justice and public utility,—in the direction to the subject as to his conduct is precise and plain, and does not give any trouble or form beyond what is conducive to the chief ends of its enactment,—in its remedy for violated rights or injuries inflicted, gives a clear, prompt and cheap mode of attaining justice; and in its penalties which form the sanction as it is termed of an act, is at the same time sufficiently rigorous to enforce obedience to its commands, or to deter offenders without extreme severity.

In the interpretation of the meaning of law, the intention of the Legislature is to be chiefly regarded, and certain rules are adopted by which this is to be ascertained in doubtful cases. 1st. The words of a law are to be understood in their usual and most known signification. 2d.

The context of the whole law may explain a particular expression; so other laws on the same, or a like subject, may be referred to, in order to elucidate a doubt. 3d. The subject matter is to be regarded, as it often will show the meaning of a law otherwise ambiguous. 4. The effects and consequence, if very absurd on a literal construction, will induce the adoption of some different meaning which the words are capable of bearing. 5. The reason and spirit of a law, and the causes that led to its adoption, compose the master-key to its meaning.

Laws are also capable of having their meaning in some cases fixed and established by contemporaneous and by continued exposition. Thus, if a law, the meaning of which is not very manifest, or admitting of several interpretations, be acted upon by judicial authority shortly after its being enacted, the meaning thus affixed to it is often presumed to be the more accurate, because when recent the intention of the Legislature would probably be better known. Continued decisions also strengthen the view they adopt of the meaning of a law by their number, their respectability and their duration.

SECTION III.

The Laws of England.

The English Law in the aggregate is called the *Common Law*, in contradistinction from the Roman Law. The latter having been, with some modifications, adopted by most of the other countries of Europe (anciently provinces of that mighty empire.) Among them the Roman law is called the civil law, having been in use as their civil law or law of the state.

The principal division of English Laws is into common law (in a more restricted sense) and statute law.

When England in barbarian times formed many kingdoms, each of them had their own set of laws. Some oral and traditionary, handed down from generation to generation by the memory of bards or aged men, others written. These being very various, when the kingdoms became reunited, Alfred the Great is said to have compiled a book, (not now extant) reducing them to some degree of uniformity. Subsequently the Danish invasion shook his constitutions and the laws were again very confused and various, until Edward the Confessor prepared a digest for the same purpose with that of Alfred. The Norman conquest again made sad havoc in the system of law used in England. The

The chief part of these laws, although not written in any distinct code now in existence, have been presented to us in the treatises of the earliest law writers, such as Bracton, Fleta, and Britton, Littleton, &c. and in the reports of law decisions regularly taken and preserved at the expense of government from Edward the 2nd inclusive, to Hen. 8th; that is, from early in the 14th century till some time in the 16th, and subsequently by a variety of private reporters. These decisions and authorities form a most extensive code of civil and criminal law, which may be regarded as the substratum of British jurisprudence. For the record of statutes or acts of parliament begins no earlier than the 9th year of King Henry 3rd, 1224, being the statute in confirmation of *Magna Charta*. Wherever there is no express statute on any point, the rule of English law must be sought for in the ancient decided cases, forms and precedents of the common law, so called because it is supposed to consist of all the laws and customs which were in common use all over the kingdom at an early period, and not confined to any particular locality. So if any act of parliament expire or be repealed, the common law revives, and is again in force on the subject as if no such act had ever passed. By its maxims all statutes are to be construed; and when it is said, that such or such was the rule at common law, it means to point out the state of the law on some particular point before the passing of some act of parliament affecting the question.

Many of the local customs of ancient use still exist in certain parts of England. These of course do not operate in a colony. The common law authorized the modified use of the Roman law, and of the ecclesiastical or canon laws in particular courts, such as the Chancery, Admiralty, ecclesiastical courts, &c. In conformity with this, in the colonies the same course has been adopted in certain courts whose jurisdiction corresponds with those named.

The common law principles and maxims, and all charters and acts of parliament which tend to confirm the common law rights and privileges of English subjects may be considered as in force *proprio vigore* in every colony whither the children of the British Islands have migrated. In addition to this, the common law is the chief fountain from which we are to draw the illustration and interpretation of our repective rights and duties.

Statute Law.

Statutes are written laws made by parliament. The oldest extant is Magna Charta, as confirmed in parliament. (1224) 9 Henry 3d. Provincial acts passed in the same manner in the general assembly are statutes of the Province, as the others are of England, Great Britain, or of the United Kingdom of Great Britain and Ireland.

They are either public or private. A public act is one that regards the whole community, and the courts of law are bound judicially to take notice of it,—without requiring any party to plead it or set it out. Private acts are such written laws of parliament as only affect some particular individuals therein specified, and judges are not bound to take notice of them until they are brought to their knowledge by the parties interested in so doing, unless a clause be inserted in them requiring judges so to do.

Statutes are either declaratory of the common law, or remedial and intended to amend some defect in it. Remedial acts are also subdivided into those which enlarge or restrain some principles of common law.

Rules of construing Statutes :—

1. It is to be considered how the common law stood before the statute passed, what inconvenience or mischief

was the cause of passing it, and what remedy it provides. It is the business of a Judge so to construe an act as to suppress the mischief and advance the remedy.

2. A statute which treats of persons or things of inferior rank cannot by general words be extended to those of a superior. Thus "Constables and other peace officers" would not include by implication sheriffs or justices of the peace.

3. Penal statutes must be construed strictly, so as not to extend their effects by implication to the punishment of any person beyond the very letter of the law.

4. Remedial statutes are to be construed liberally.—Such are the laws which vacate fraudulent sales, &c. To their language construction is used so as to enlarge and not narrow the meaning, by too literal an interpretation.

5. One part of an act is to be so construed by another that the whole act if possible may have effect.

6. An exception repugnant to the whole tenor of an act will not operate, but the act will have operation as if it contained no such exception or saving.

7. When common law and a statute differ, the statute has effect and suspends the common law,—and a new statute abrogates (as far as they differ) an older one. But if they can be understood consistently with each other, both are to have effect.

8. If a repealing act be repealed, the act which was at first repealed revives of course.

9. Acts of parliament to tie up and embarrass the legitimate constitutional functions of subsequent legislatures are not binding.

10. Laws absolutely absurd or impossible to be obeyed, though enacted in parliament, are void.

What is called the equity of a statute is a rule arising by inference from an act, as a corollary to its principal directions.

SECTION IV.

Early State of Nova-Scotia.

The present North American colonies of Great Britain formed a very valuable portion of the external dominions of France. Possessed of these important provinces, the French participated largely in fisheries and commerce on the Atlantic. Having gradually encircled the then English colonies (now the United States) with forts and settlements on the lakes of Canada, on the Ohio and Mississippi, and having under their control numerous tribes of savages, they harrassed and annoyed the English settlers, and rendered their possessions along the coast extremely insecure. The spirit of rivalry which had subsisted for ages between the two nations in Europe, operated with equal violence on this continent. After much desultory warfare by land and sea, the contest was finally decided on the capture of Quebec by the heroic Wolfe. The English settlements were relieved from the continual dread of a powerful and hostile neighbor, and the French territory in North America became subjected to the British crown by the right of conquest and by cession.

Long previous to this event the treaty of Utrecht in 1713 had transferred to Great Britain the province of Nova Sco-

tia, or Acadia. A garrison from England was placed at Annapolis, and another at Canso. A governor and council were established at the former place, who continued to reside there until 1749. It does not appear however, that the British government made any change during this period in the laws and manners of the native French inhabitants; who were permitted to live as they had been before accustomed, without any kind of interference. Meanwhile the French of Canada and Cape Breton, made frequent attacks on the British forts and shipping in this province, and received much aid from their countrymen in Nova Scotia in their warfare. The inhabitants of Massachusetts' Bay were very urgent with the mother country, to strengthen the northern frontiers of the British possessions in America, and suggested the establishment of a colony at Halifax. A very powerful fleet had been sent from France in 1741 —having forces on board destined to conquer or destroy all the English settlements, in North America, and having been much damaged by tempest, had taken refuge in Chebucto bay (on which Halifax is built) then uninhabited. It was thought advisable to form a settlement there, as an aid to the prosecution of the fisheries,—as a military post to keep the French and Indians in check, and finally as a place of rendezvous, from which any armament designed to attack the French possessions might be sent. Accordingly, in 1749, the Government sent out troops and colonists, and the town of Halifax was founded. The expectations of the promoters of this design were fully realized by the successive reductions of Louisburg and Quebec in 17[illegible]3, and 1759, by expeditions that were collected at Halifax.

The seat of government was transferred to Halifax in 1749, where it continued to be administered by a governor, lieutenant-governor, and council. The laws, from this period, were chiefly such as were in force in the neighboring English colonies, and a general court and other

institutions were copied from their's. In 1758, his Majesty transmitted instructions directing the Governor to call together the representatives of the people in general assembly, after the manner of the older English settlements. Counties and townships were then erected, to which others have since been added, and the freeholders in this province have ever since exercised, without interruption, the right then conferred, of choosing from their own number the persons to whom they were willing to confide the protection of their political interests.

SECTION V.

Of the Territory of the Province.

Nova-Scotia originally was of very great extent, including the present provinces of Nova-Scotia, New-Brunswick and Prince Edward island, and its ancient boundary on the south west was frequently the subject of debate between the French and English crowns, and subsequently between the United States and England, and remains unsettled in some parts of the line to this moment. After the termination of the American revolutionary war, Great Britain, in making settlements of the refugee loyalists and other emigrants, found it more convenient to erect new governments, and thus New-Brunswick* and Cape Breton were severed by the orders of his Majesty's government, and erected into separate provinces. New Brunswick and Prince Edward island each obtained a constitution similar to that of Nova-Scotia, but Cape Breton remained under the management of a governor and council, without a representative legislature, until 1820—when his Majesty reannexed it to Nova Scotia, and by provincial Act 1 Geo. 4. c. 5. the laws of Nova-Scotia were declared to be extended to it, and at the same time it was suffered to send two county members to the assembly of this province.

The peninsula of Nova-Scotia proper, with the island of Cape Breton, constitute the present territory of the provincial government—which is thus divided, the pen-

* Prince Edward island was before separated.

insula into nine counties, viz. :—Halifax, Hants, Cumberland, Sydney, King's, Annapolis, Shelburne, Queen's, and Lunenburg. The island of Cape Breton is the tenth county.

Some of the counties are divided into districts, to facilitate the local business of the country, giving each district a set of public officers nearly equivalent to those of a separate county. In Halifax county there are the three districts of Halifax Proper, Colchester and Pictou, each of which has every arrangement for the administration of justice, the registry of deeds, &c.—as if it were a separate county, wanting only the name and a county representation in the assembly.

The settled parts of the province and those where settlements are attempted, have been further divided into townships, some as large as the smaller counties, and many more of smaller dimensions; and it is probable that this mode of division will be extended over the whole surface of the country, as it is a favorite manner of allotment in North America, and is very useful as a guide to the arrangement of the representation, the local assessments and a variety of other purposes.

As to ecclesiastical division, the province is the chief establishment of an episcopate, which bears its name, and includes the whole of ancient Nova-Scotia, together with Newfoundland and the Bermudas. It is not yet subdivided into parishes, except in a few instances, though the missions of the clergy are fixed permanently in the different settlements.

In a military point of view it is a lieutenant general's command, of which Halifax is the head quarters, and the naval force on these coasts was under the command of a vice or rear admiral, stationed alternately at Halifax and Bermudas, but is now included in one command with the West Indies, &c.

SECTION VI.

The sources of the Law of the Province.

The sovereignty, as well legislative as executive, over this colony, may be properly considered as residing in the crown from 1713, the date when the province became British, until a constitutional form of government was erected in 1758. His Majesty's instructions to the governors, his proclamations, commissions, and other acts of government, during this period had therefore a legislative authority, and on them our present constitution is grounded, as well as on the general principles of British law and liberty considered the birthright of a free people. When any of these have remained unrepealed and unaffected by subsequent laws, they will have a validity and force commensurate with the authority from which they emanated, and the purposes intended by them. We must take care, however, not to attribute this legislative character to any acts of the executive power which have emanated since the establishment of a representative.

The next source of our provincial law is to be sought in those portions of the common and statute law of England, as have been adopted into our own code by provincial usage, enactment or decision.

The acts of our own general assemblies are a third source of provincial law.

The rules of practice and decisions of our provincial courts, constitute a fourth source of our law.

British acts of parliament *for the regulation of commerce* in the Colonies, form a fifth source of our colonial law.

As to provincial acts, when a new law is offered to the governor for his sanction, if there is any reason to doubt that it will be approved of by his majesty, a clause is usually added to it, suspending its operation until the king's pleasure shall be known. Besides this, the crown sometimes, though rarely, disallows an act which has passed without a suspending clause. All acts passed are immediately sent to England, and if not disallowed within two years are considered permanent laws. Unless there be a suspending clause, a provincial act goes at once into operation on receiving the governor's assent. If afterwards disallowed, the disallowance operates as a repeal would.

By the act of 1778. (British Statute). 18 Geo. 3. c, 12. it is declared—"That from and after the passing of this "act, the King and parliament of Great Britain will not "impose any duty, tax or assessment whatever, payable in "any of his majesty's colonies, provinces and plantations, "in North America, or the West Indies; except only such "duties as it may be expedient to impose for the regula-"tion of commerce; the net produce of such duties to be "always paid and applied to and for the use of the colony, "province or plantation, in which the same shall be re-"spectively levied, in such manner as other duties col-"lected by the authority of the respective General Courts, "or General Assemblies, of such colonies, provinces or "plantations, are ordinarily paid and applied."

British acts of parliament which incidentally legislate for the Colonies and which expressly mention them, passed under the general superintending power of parliament, for purposes connected with the general government of the empire, make a sixth source of our provincial law. The act of 1819 (British statute) 59 Geo. 3, c. 69 (Foreign enlistment act) is an example of the kind. This act makes it a misdemeanor "punishable by fine and imprisonment, or either of them, at the discretion of the court," for any natural born subject of his Majesty, his heirs or successors, to enlist in the service of any foreign government, without license of the crown, order in council, or proclamation permitting such enlistment, and imposes similar punishment on those who shall procure others to enlist. The trial of the offence to be by any superior court having criminal jurisdiction in the colony, &c.

SECTION VII.

How far the Laws of England are in force in this Colony.

The common and statute law of England, composing together an extensive code, suited to the Great Empire under whose auspices we live, are not, as a whole, suited to our situation as a colony For this reason, only such parts of both, as were found applicable to our situation and conformable to general principles, have been from time to time adopted and recognized by the legislative and judicial authorities of the colony. In the first place the Crown, exercising then a sovereign power, directed its governors and other public officers to execute justice upon the principles of British law; and upon the same principles it erected tribunals of law and equity, modelled on those of the mother country, with such modification and changes as the difference of circumstances appeared to demand. In the same way the Crown appointed and established its governors and other executive magistrates, and regulated their functions and authority. A regular constitution having been established in 1758, by the convocation of a General Assembly,—the acts of that body have since formed a system of law grounded partly on the principles of the common law and the earlier acts of par-

liament, and partly on the model of the acts of older provinces of North America, together with many regulations peculiar to this country. In addition, the decisions and practice of our own courts, and the general usage of the people at large, have assisted in bringing into use or rejecting different parts of the English common and statute law.

Some of the branches of law have been so far reduced into regular and systematic order by the foregoing means, that little difficulty can arise in ascertaining the true course of enquiry when any question connected with them arises; but there are many subjects which seem likely hereafter to give rise to much perplexity, as the provincial enactments and decisions are not capable of furnishing an adequate source of law to elucidate them, and much doubt exists as to the degree in which the English common or statute law are valid in the colony, except those parts of it which have met with an express legislative or judicial recognition or rejection.

I have given in the note several of the principal authorities on this point. Their views are for the most part vague and extra-judicial. Some of them appear to consider the whole common law as in force in the colonies. This would introduce a great variety of rules which are entirely inapplicable to our situation and circumstances, which have been abrogated in England by statute law; and in fact however frequently such a maxim may have been repeated, it has not in practice been adhered to in any of the colonies, and would be attended with much practical mischief. Our courts of justice are of necessity obliged to exercise to a certain extent powers of a legislative description, in adopting or rejecting different parts of the English law, on the apparent applicability to our circumstances, or the reverse. At the same time the common law has furnished us with many forms of proceeding, those of the Supreme

and Inferior courts,—which follow the practice of the superior courts at Westminster, where no provincial statute or usage interferes; and the rules of evidence are drawn from the same quarter. The common law is also referred to as the best interpreter of those laws and constitutions of the province, which borrow from it their principle and phraseology. The civil law of Rome has a greater share in the composition of our laws than it has in those of the mother country, as our whole law of succession to intestate persons follows the former, besides its importance in the Chancery, Admiralty and Marriage courts. To this therefore we must often look for aid as an interpreter, and also to the laws of the older colonies, as from them we have borrowed many regulations.

Thus, while it seems doubtful whether any English laws (except those in which the Colonies are expressly named) have any validity here, until they have been adopted into our local jurisprudence by distinct legislation or general recognition and usage; yet, what are generally esteemed the most valuable portions of British law, have been transplanted into our land,—the Habeas Corpus,—the freedom of the Press—the trial by Jury—the Representative Branch of legislature,—the viva voce examination of witnesses; in fine all those branches of public law which have drawn the eulogium of the wisest and the best of men upon the British constitution, we possess. While we are freed from many that have formed the subject of constant objection in the mother country. Thus our law, by dividing the inheritance among all the children of an intestate, and by abolishing most of the unnecessary and artificial distinctions between real and personal property, has relieved us from the unjust rules of primogeniture and from much subtilty of legal definition.

The Game Laws, the Tithe system, and much of the ex-

pensive and unnecessary variety of Courts are unknown among us, and the comparative simplicity of our legal forms, in conveyancing and in law suits, would astonish an English practitioner: while the cheapness of law proceedings in general (though there are some exceptions) would be equally wonderful in his eyes. The Poor laws in Nova Scotia are simple and unproductive of litigation, answering every end of benevolence without burthening the country. Stamp duties are not in existence, and the titles of land have from our earliest settlement been rendered infinitely more secure than in England by a general and simple act of registry. Marriage is not shackled by arbitrary legislation. The penal law is perspicuous and mild, and indeed I may refer to every chapter of this book to shew, that having an opportunity of establishing a Provincial Code with the benefit of the experience and philosophy of older countries, our forefathers have not failed in their duty; but have transmitted to us a system simple and concise, founded on the best principles, and that, except on a few points, they have left little to their successors beyond the duty of preserving, polishing and throwing light upon, the useful result of their labors.

Authorities—British.

The common law of England is the common law of the plantations, and all statutes in affirmance of the common law, passed in England, antecedent to the settlement of a colony, are in force in that colony, unless there is some private act to the contrary; though no statutes, made since those settlements, are there in force, unless the colonies are particularly mentioned. Let an Englishman go where he will he carries as much of law and liberty with him, as the nature of things will bear.—1. Chalmers' opinions, 195.

In pursuance of this principle, persons under suspicion of crime cannot be detained any length of time in prison without trial, by a colonial government.—idem 196.

But such statutes as are introduced and declared to be laws by some act of assembly of the province, or have been received there by long uninterrupted usage or practice, have the force of law.—idem. 130, 197, 220. See also English Stat. 25 Geo. 2, Ch. 6, s. 10.

In penal statutes made in England, which mention "this realm," Nova Scotia, or any other colony, is not included.*

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* The opinion of the attorney and solicitor Henley, and Yorke, "that the subjects emigrating do '(not)' carry with them the statute law, in 1757."

"My lords, In obedience to your lordships' commands, signified to us by Mr. Pownal, by letter dated April 1st, 1757, accompanied with an inclosed letter and papers, which he had received from Jonathan Belcher, Esq. chief justice of his majesty's colony of Nova Scotia, relating to the case of two persons convicted, in the courts there, of counterfeiting and altering Spanish dollars and pistereens, and requiring our opinion, in point of law, thereon: we have taken the said letter and papers into our consideration, and find that the question upon which the case of those two persons convicted of high treason depends, is this, whether the act of parliament, 1st Mar. ch. 6, entitled an act, that the counterfeiting of strange coins, (being current within this realm), the queen's sign manual, or privy seal, to be adjudged treason, extends to Nova Scotia, and is in force there, with respect to the counterfeiting Spanish dollars and pistereens, in the said province.

And we are of opinion, 1st—that it doth not; for that the act is expressly restrained to the counterfeiting of foreign coin, current within this realm, of which Nova Scotia is no part.

Secondly, we are of opinion that the proposition adopted by the judges there, that the inhabitants of the colonies carry with them the *statute laws* of this realm is not true as a general proposition, but depends upon circumstances, the effect of their charter, usage, and acts of their legislature; and it would be both inconvenient, and dangerous, to take it in so large an extent.

The act 28, Hen. 8, c. 15, respecting pirates, cannot be enforced in the colonies, but murder committed in *any part* of the high seas, may be tried under it in any county of England, and persons imprisoned in the colonies under such charges may be sent to England for trial. 1 Chalm. opin. 199.

The acts of 11 and 12, Wm. 3, c. 7, and Geo. 1. c. 2. Sec 7, respecting piracy and burglary, do not extend to cases of murder, 1 Chalm, Op. 200.

The Habeas Corpus act of 31 Car 2, is in use in Nova Scotia.—Acts which have reference in the enacting clauses to all " his majesty's dominions" have effect in the colonies, as for instance the 12 Ann. stat. 2. c 18. entitled ' an Act for preserving of all such ships and goods which shall happen to be forced on shore upon the coasts of this kingdom, or *any other of his majesty's dominions*,' and the 4 Geo. I. c. 12, in addition thereto (except the 3d clause of 4 G. I. cap 12, see the 11 Geo. I. cap 29, sec 7.) 1 Chalmers opin. 201.

The statute of 33 Hen. 8, cap. 23, authorizing the issuing of commissions of oyer and terminer, in cases where murder, &c. is suspected by the council, does not extend to the Plantations. 2 Chalmers op. 153.

" Besides these adjacent islands, our more distant planta-
" tions in America, and elsewhere, are also in some res-
" pect subject to the English laws. Plantations or colo-
" nies, in distant countries, are either such where the lands
" claimed by right of occupancy only by finding them de-

And thirdly, we are of opinion, that the offence can only be considered as a high misdemeanor, unless there are any provisions in any charter, granted to that province, which make it a greater offence, to which we are entirely strangers.

May 18, 1757. R. HENLEY.
C. YORKE.

" sart and uncultivated, and peopling them from the mo-
" ther country; or where, when already cultivated, they
" have been either gained by conquest, or ceded to us by
" treaties. And both these rights are founded upon the
" law of nature, or at least upon that of nations. But
" there is a difference between these two species of colo-
" nies, with respect to the laws by which they are bound.
" For it hath been held, that if an uninhabited country be
" discovered and planted by English subjects, all the Eng-
" lish laws then in being, which are the birthright of every
" subject, are immediately there in force. But this must
" be understood with very many and very great restrictions.
" Such colonists carry with them only so much of the
" English law, as is applicable to their own situation and
" the condition of an infant colony; such, for instance, as
" the general rules of inheritance, and of protection from
" personal injuries. The artificial refinements and dis-
" tinctions incident to the property of a great and com-
" mercial people, the laws of police and revenue, (such
" especially as are enforced by penalties,) the mode of
" maintenance for the established clergy, the jurisdiction
" of spiritual courts, and a multitude of other provisions,
" are neither necessary nor convenient for them, and there-
" fore are not in force. What shall be admitted and what
" rejected, at what times, and under what restrictions,
" must, in case of dispute, be decided in the first instance
" by their own provincial judicature, subject to the revision
" and control of the king in council: the whole of their
" constitution being also liable to be new-modelled and
" reformed by the general superintending power of the
" legislature in the mother country. But in conquered or
" ceded countries, that have already laws of their own, the
" king may indeed alter and change those laws; but, till
" he does actually change them, the ancient laws of the
" country remain, unless such as are against the law of
" God, as in the case of an infidel country. Our Ameri-

" can plantations are principally of this latter sort, being " obtained in the last century either by right of conquest " and driving out the natives (with what natural justice I " shall not at present inquire,) or by treaties. And there- " fore the common law of England, as such, has no allow- " ance or authority there; they being no part of the mo- " ther country, but distinct (though dependent) dominions. " They are subject, however, to the control of the parlia- " ment; though (like Ireland, Man and the rest) not bound " by any acts of parliament, unless particularly named."

American authorities.

Mr. Kent, in his Commentaries, says of the common law of England, " It is the common jurisprudence of the peo- " ple of the United States, and was brought with them as " colonists from England, and established here, so far as " it was adapted to our institutions and circumstances. It " was claimed by the Congress of the United Colonies in " 1774, as a branch of those " indubitable rights and liber- " ties" to which the respective colonies were entitled." 1 Com. 322.

" It is undoubtedly true, that the common law of Eng- " land, so far as it was applicable to our circumstances, was " brought over by our ancestors upon their emigration to " this country." — " It has been adopted and declared " in force by the constitutions of some of the states, and " by statute in others, and where it has not been so expli- " citly adopted, it is nevertheless to be considered the law " of the land, subject to the modifications which have been " suggested, and to express legislative repeal. We shall " accordingly, in the course of these lectures, take it for " granted that the common law of England, applicable to " our situation and governments, is the law of this country " in all cases in which it has not been altered or rejected

" by statute, or varied by local usages, under the sanction
" of judicial decisions." 2 Com. 23. 24.

1. Dallas's Reports 67.

Supreme Court of Pennsylvania 1782.

Per Mc Kean, Chief Justice.

" It is the opinion of the court that the common law of
" England has always been in force in Pennsylvania; that
" all statutes made in Great Britain, before the settlement
" of Pennsylvania, have no force here, unless they are con-
" venient and adapted to the circumstances of the coun-
" try; and that all statutes made since the settlement of
" Pennsylvania have no force here, unless the colonies are
" particularly named."

SECTION VIII.

The principles of the Government.

The inhabitants of this country, from the earliest settlements of the French in 1603 to the present time, appear to have enjoyed the advantages of a kind and paternal government acting upon fixed and known laws, and recognizing, both in theory and practice, the principles of genuine and practical civil liberty. There may have been, and doubtless were in so long a period exceptions to this; but they have been temporary and local and have not originated with the parent governments. The general tenor of our history is that of a country possessing the benefits of freedom, and the deviations have been trifling, and hardly perceptible at this distance of time. The severe exertions and the privations incident to colonization in a wilderness land, and a climate where the temperature is exceedingly variable, and the atmosphere seldom three days in the same state; those impediments require an energy in the first inhabitants which they would be incapable of exerting, were they not in possession of more personal liberty than even the citizens of the most free states, where nature has been more subdued and climate ameliorated. The comparative poverty of the major part of the settlers in these countries, the benevolent feelings of the great and magnificent mo-

narchs who patronized their establishment,—the desire of extending empire in the new world,—the scattered state of a recent population, and the genius of the people from whom they originate, have all more or less contributed to produce the good effects we have mentioned.

Freedom, who had gradually been winning her way as an emigrant, to these rocky shores, became firmly settled as a denizen in 1749—when the British government gave to the settlers of the Halifax Colony the distinct pledge that they should enjoy all the rights and liberties of British subjects. This was renewed to the settlers from Massachusetts invited over by Governor Lawrence, and in 1758, was finally confirmed in perpetuity by the establishment of a representative constitution. This was fully recognized by the decision given many years ago at Annapolis, when the doctrine was acted upon that slaves brought into this country became free *ipso facto* on landing.

Personal liberty has been secured by a multitude of provisions, in the common law and statutes of the mother country, all of which that go to establish the freedom of the people, from *magna charta* down to the period of our colonization in 1749, may be considered in full force in Nova Scotia, and have been constantly recognized as law by the colonial judges. This has been so much the case that although many English statutes have been reenacted by the Provincial legislature *ex abundanti cautela ;*—they have not considered it necessary or judicious to reenact any of those which establish public liberty, considering the national faith and royal authority pledged to the first settlers, to have confirmed them in the indisputable possession of that portion of the laws of England. By the great charter it was enacted that no freeman should be imprisoned in an arbitrary manner; and by the petition of right 3 Car. I—and the habeas corpus acts of 16 Car. I, c. 10, and 31 Car.

II. c. 2, a speedy and efficacious method of obtaining liberation and redress for any unjust and illegal imprisonment is given*—and by 1 Wm. & M. st. 2. c. 2. it is directed, that excessive bail shall not be demanded where the imprisonment may be legal.

It is considered part of a man's liberty, that he shall not be compelled to leave his native country, nor to be forced to quit his residence in any part of it. It is equally essential to liberty, that he should not be hindered from travelling abroad, whenever his interest or inclinations lead him to do so. Those who are in debt, and those who are accused and arrested in a legal manner for alleged crimes, are subject to imprisonment or detention by writs of capias, —under execution,—under process in chancery termed a writ of *ne exeat regno*—or under criminal warrants. Persons who have given bail for their appearance, and are endeavoring to escape to the prejudice of their bail, are also liable to arrest and detention; and finally prisoners convicted of offences, where imprisonment is part of the legal punishment, are deprived of liberty for their allotted term. In all other cases, the laws of the Province give to its inhabitants the fullest liberty of locomotion, of changing residence or abiding, at the will of each individual. The departure of travellers is regulated by a statute of the Prov. 32 Geo. II. c. 23, 1 P. L. 32—34. Extended by 6 G. 3, c. 4, 1, P. L. 119. passed for the protection of creditors against the frauds that might be attempted. By this law, no person is allowed to leave the country without obtaining a pass,—in order to procure which they must publish their names in the secretary's office for seven days; at the end of which, if no creditor has entered an objection, the secretary is bound to grant the pass under the penalty of

* The right of deliverence from all unlawful imprisonment, to the full extent of the remedy provided by the habeas corput act, is a common law-right. 2, Kent's Com. 23.

£50. His *fee* for the pass is directed to be one shilling only. If a creditor objects, he is to write his name under that of the applicant on the public list, and swear to his debt before a justice of the peace. On this the secretary will require security to the amount of the debt, before he can grant the pass. Those who cannot wait for seven days may obtain a pass at once, by giving security for their debts to the secretary. Passes can also be obtained in a similar way at outports. To secure the act from violation, a shipmaster, who carries away any person not having a pass, is made liable for all his debts, and £50 fine. Temporary laws of the Province are enacted and kept in force by continuing acts, by which foreigners are liable to certain restrictions, similar to those of the English alien laws. This was first done during the period of the French revolution. The alien acts will be fully explained in another part of this work, and need not now be detailed.

The security of property is best guarded by the nature of a representative government—where every man has by his deputies a share in the making of the laws.

GENERAL DIVISION

OF THE SUBJECT.

In so extensive a subject, it is necessary to divide a treatise like the present into certain leading titles, each of which may embrace a considerable portion of the work. Then the division of each chief head into chapters necessarily follows ; and a still farther subdivision as far as convenience will permit. This will be found to facilitate reference and to assist the memory in the perusal of all scientific works.

The first general title will be that of " Government."—Book I. will begin with the rules that distinguish the subjects of this government from those who are aliens or strangers to its laws. It will then treat of the General Assembly or Legislature,—of the Executive Government of the Province, of the subordinate government of counties and townships—including in each portion a description of the revenues, general and local.

Then such portions of the statutes of the Province will be given in an abridged form as are *general* in their extent, and intended chiefly to serve as *directions* to the various public officers and magistrates, in the execution of very many of their duties, under the several heads of :—

Agriculture, Inspections, Trade ;—Religion, Morals, Charity, Education,—the general preservation of Health,—Amusements,—the Militia.

Having thus given an abridged view of the chief operations of government (except the judiciary, which is necessarily reserved for a subsequent and separate consideration,)—the government of families and private relations of life, will be explained under the titles, Master and Servant, Husband and Wife, Parent and Child, Guardian and Ward; and the artificial unions recognized by law, as Corporate Bodies, will be noticed.

All the subjects in the first Book will be found in a greater or less degree to stand in connexion with the general title of Government, considering it either as exercised by the General Government of the Province, by Magistrates in the local administration of the affairs of counties and townships, or in the private relations of life by domestic authority. The titles and arrangement of the subjects of Agriculture, Inspections, &c. will I trust be found convenient as regards the present state of our statute law, and will offer a systematic division, of use in any future edition of this work, or in the composition of any other on provincial law which may embrace these branches of our statute law.

Book II. will give an extensive view of our provincial law respecting real estate, or landed property.

Book III. will treat of the laws of personal estate, or moveable property, including a description of most of the usual contracts connected with this head.

Book IV. will contain a description of the Courts of Justice, embodied under the principal divisions of Civil Com-

mon Law Jurisdiction, Equity Jurisdiction, and Criminal Jurisdiction; and the Courts of Error, Appeal, Admiralty, Escheat, Marriage and Divorce, &c. will be described. The rules of evidence and pleading, the forms of trials, rules of practice, and the Summary Civil Jurisdiction, will all be detailed as fully as the limits of the work will permit.

Book V. will describe mercantile contracts, not strictly belonging to the title of personal property.

Book VI. will give an analysis of all the provincial statutes which are confined in their operation to particular towns or counties.

An appendix will be given at the end of each book, containing, among other things, a variety of useful provincial forms.

Each of the four volumes will have an Index of the subjects it contains.

BOOK I.

ON GOVERNMENT.

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CHAPTER I.

Subjects and Strangers.

In Nova-Scotia one's attention is very rarely turned to any question connected with the distinction of British subjects from aliens. Indeed a rigorous adherence to legal principles in this respect would be highly injurious to the advancement of a colony, as the check it would give to settlers from different countries could not fail to keep back our wealth and population. Much uneasiness and trouble did exist respecting the alien laws in Upper Canada, but they have been happily set at rest there.

All the natural born subjects of the British crown are entitled to all the rights of citizens, in whatever part of the empire they may reside or sojourn. Those who are born within the dominions of the crown of Great-Britain are considered in law as natural born subjects of his Majesty, and are said to be born within his allegiance.

Allegiance is the tie of duty which binds the subject to the sovereign authority, in return for the protection afforded to him by the government.

This duty is binding on the subject without an oath, but to add the sanction of religion, the oath of allegiance

is directed by many English statutes, to be taken by all public officers, and in Great Britain all persons are bound to take it if offered them. 1. B. C. 368. See Co. Lit. 129. a & b.

Natural born subjects cannot divest themselves of their allegiance, which is of a permanent and indelible character according to English Jurists, and not to be rescinded but by an act of Parliament, or treaty, or some other concurrence of the crown itself.* It has been determined that natural born subjects of the British crown, who adhered to the United States in the war of the revolution, lost their right to inherit land in England, and vice versa those who adhered to the royal cause lost their right to inherit lands within the territory of the United States. See Doe d. Thomas v. Acklam 2 B & C. 729, which cites 7 Wheaton's R. 535. See also Foster 59. 184. 5.

Strangers, as long as they continue within the dominions and under the protection of a state or sovereign, owe *pro tempore* an allegiance in return, but this ceases by a change of residence.

The English jurisprudence makes a distinction between a sovereign *de jure* and *de facto* ; that is, between one holding the crown by rightful title, and one not having the right but possessed of the sovereignty; and British princes have in ancient times punished persons capitally for treasons committed against those whom they counted usurpers, where such treasons were not the acts of their own adherents. Thus Edward IV. punished for treason committed against Henry VI. who had been declared an usurper by Parliament.

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* The American Courts hold that a citizen of that country cannot divest himself of his allegiance (in conformity with the English law.) See Kent, 2 v. 36.

This allegiance is held by English lawyers to have a relation to the person and family of the sovereign, as well as to his political capacity and government. Subjects are also bound to take the oath of supremacy and abjuration —the one denying the jurisdiction of the Pope in the government of church or state, the other acknowledging the right and title of the present royal family, as settled by acts of Parliament, and denying the (quondam) claims to the crown of the Stuart family. Roman catholics take a modified oath prescribed by the late emancipation act. See extracts from the relief bill in the Appendix.

By the Roman law if an alien purchased lands the contract was annulled as contrary to principles of public polic, Cod. l. 11. tit. 55. but by the English law the transfer is valid so far as to be binding on the vendor or donor; but the "use" or ownership of the land rests in the King. Of course with the tacit permission of government an alien may purchase and occupy land. Yet an alien may purchase goods or *moveables*, and may hire a *house for habitation*, and contracts of this kind are valid to his own use, but a lease of *lands* would be forfeited to the crown. Co. Lit. 2. An alien may trade in any way, and all contracts of his incident to commerce or a trade will be valid, and he may be a party to suits respecting moveables, and may dispose of them by will. Lutw. 34. A woman alien cannot be endowed unless she marries by the license of the king. 8 Hen. 5. No. 15 Rot. Parl. Harg. Co Lit. 31. a. n. 9. nor can a husband alien be tenant by the courtesy 7. Co 25.

There was a law in France by which the king, on the death of an alien, became entitled to all his property in the French dominions. This was called the *droit d'aubaine*, or *jus albinatus*, a word derived from *alibi natus*, 'elsewhere

born.'—Spelman Gloss, 24; but this is now abolished by the *code civile*, which declares it no longer to exist except against natives of countries where a similar law is enforced against Frenchmen.—No such law is in existence here

These immunities in favor of strangers are not extended by our law to the subjects or citizens of states actually at war with us, as the existence of war destroys all relations of unity. Alien enemies, as they are termed in law, must depend on the will of the crown, for any favor or protection they can receive; yet justice and humanity are paramount, and whatever they prescribe must be attended to. Thus the military power being entrusted to the Government, any wanton or inhuman attacks of an offensive kind, against even an enemy's territory, or the persons or property of the enemy, made by private and unauthorized persons, must be regarded as an offence against the government; and on the same principle an action could formerly be brought in our courts by an alien enemy, for ransom promised to him; but ransoms are now prohibited by British Statute, 22d, Geo. III. c. 25, in cases of ships and property captured.—See Douglas, 625.

Naturalization may give all or part of the rights of a native subject, to a person not a native, by a species of adoption. By a variety of British statutes all children born out of the king's dominions, whose fathers or grandfathers by the father's side, were natural-born subjects, are now deemed to be natural born subjects themselves, to all intents and purposes; unless the ancestors in question were attainted or exiled for treason, or were at the birth of such children in the service of an hostile government. These acts do not extend to children of a British born mother, Count Duroure, v. Jones, 4, T. R. 300.

The children of aliens, born within the king's dominions,

are generally speaking natural born subjects, and entitled to all the privileges; but there is an exception to this, when the parents were at the time acting in the capacity of enemies. 7. Co. 18. a. The same law exists in France, where by the *code civile*, the child of foreign parents born in the country, may, within a year after attaining the age of 21, claim the rights of a Frenchman, declaring, (if not then domiciled in France) his intention to settle there, and actually settling there within a month after such declaration.

By the English statute, 11 and 12, W. III. c. 6, natural born subjects may derive a title by descent, through aliens, parents or ancestors. This statute may be considered in force here, but it is restricted by an act of Parliament, 25, Geo. II. c. 39, to a certain class of cases. The last named act I should not suppose affected this colony, as it is subsequent to the acquisition of the Province in 1713, and besides contrary to the colonizing principle.—See also Harg. Co. Lit. 8. a. The acts of the British Parliament, whenever passed, that go to define who shall be considered as subjects or as aliens, have an efficacy from their nature in all the British dominions; but any colonial act of naturalization, would, according to the opinions in Chalmers, have an operation confined to the territory of the province in which the act was passed. The crown, by letters patent, may make a stranger a denizen. A denizen may take lands by deviseor purchase, but not by inheritance from an alien. The children of a denizen, born before his denization, cannot be his heirs to property in the king's dominions, but those born subsequently may—2, B. C. 374.*

Bills passed in the parliament of the mother country for naturalizing an alien, must by stat. 1 Geo. I. c. 4. contain

* But if an English subject marry an alien, she is forthwith of the king's allegiance, and their issue shall inherit, and it shall not escheat.—Kitchin, 220. Abr. of the Book of Assizes, fo. 39.

the same disabling clauses as those of the act 12 Wm. III. c. 2. and further rules respecting them are prescribed by Brit. statutes 14 G. III. c. 84. 7 Jac. I. c. 2. yet foreign princes have been naturalized by special acts, contrary to these rules.

Every *foreign seamen* who in time of *war serves* two years on board an English ship by virtue of the King's proclamation, is *ipso facto* naturalized by Brit. act 13 G. II. c. 3. but with the before named disabilities contained in the act 12 W. III. c. 2.

All foreign protestants and jews, upon residing seven years in any *British American* colony, without being absent above two months at a time,—and all *foreign protestants* serving two years in a *military* capacity there, or being three years employed in the *whale fishery*, without afterwards absenting themselves from the king's dominions for more than one year, and not being under any incapacity mentioned in 4 G. 2. c. 21.* shall, on taking the oaths (or affirmations) of allegiance, &c.† be naturalized, except

* Exceptions from the benefit of the act of naturalization: Children of parents who at the time of their births were attainted of high treason, either in G. Britain or Ireland, or by act made in either kingdom, were liable to penalties of high treason or felony, in case they returned to Great Britain or Ireland, without H. M.'s license, or who were in the actual service of any foreign state at enmity with G. B.—4. G. 2, c. 21, s. 2 (Eng. act.)

† Foreign protestants are to take the sacrament in some protestant congregation in G. B., or some of the Colonies in America, within three months next before taking the oaths, and they are to produce a certificate signed by the person administering the sacrament, and attested by two witnesses, whereof an entry shall be made in the Secretary's office of the colony where such persons reside, and also in the court where the oaths are to be taken, without fee.—English statutes, 13. G II. c. 7, s. 2. They are to take and subscribe the oaths and declaration appointed by English Statute 1, G. 1, stat. 2, c. 13, before the Chief Justice, or other judge of the colony, where they reside, before the judge in open court between the

that they are not to hold offices or receive crown grants of land in Great Britain or Ireland. Where a country conquered by the British arms becomes part of the king's dominions, its inhabitants become subjects, and are every where to be so considered, and not as aliens in any respect. See Ld. Mansfield's opinion in the case of Campbell v Hall, Cowper 204, from which it may be inferred that the law is the same in ceded, as in conquered territories.

The desire of encouraging settlement in the older colonies, caused the passing of colonial acts of naturalization, which conferred, within the colony which passed them, all the rights of British subjects, except that they had not the effect of rendering an alien free from the operation of the navigation acts, so as to be registered owners of British shipping, &c. being the act of a local legislature only, its effect was only local. 1 Chalm. op. 344. The assembly of Virginia by act of 1680, c. 2. made a law authoriz-

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hours of 9 and 12 in the forenoon, the oath shall be entered in the same court, and also in the Secretary's office of the colony where they reside, fee for entry, 2s. £10 penalty on officer neglecting to make the entry. English act, 13 G. 2, c. " s. 1.

Quakers are excused from taking the sacrament, and Jews from the words " upon the true faith of a christian," in the oath of abjuration, by sec. 2 and 3.

Sec. 4, makes a testimonial of the residence and the oaths, &c. under the seal of the colony, evidence of naturalization in any British, Irish, or colonial courts. Sec. 5, requires the colony's secretary to send annually to the Commrs. of trade and plantations, a list of such persons. See further English acts, 20 G. 2, c. 44, 2 G. 3, c. 25, 14 G. 3, c. 84.

Natural born subjects are enabled to inherit through an alien lineal or collateral ancestor, real estate in any part of the empire, by English statutes, 11 and 12, W. III c. 6, s. 1, 25 G. 2, c. 39, s. 1, 16, G. III, c. 52. s. 1. 2. 3.

Foreign merchants in places that surrender to his majesty, are permitted to trade as if natural born subjects, while the place continues under H. M.'s protection, by 37, G. III. c. 63, s. 5—6, 34. G. III. c. 42, s. 6.

ing the governor to naturalize any aliens settled in the Province, by patent under the broad seal of the colony, and the persons naturalized were to be entitled to all rights in the colony as if born there, on their taking the oath of allegiance. The same authority was given to the governor by the legislature of Jamaica, by act of 1683, act 22.

Both these colonies appear to have used every means to encourage colonization and settlement; for we find that they had procured from the crown at an early date, an established right in favor of every new settler, for the patent of fifty acres of land for himself, as much for his wife, &c. See Jamaica acts 1st vol. and Virginia acts of 1677. c. 9.

BOOK I.—CHAPTER II.

GENERAL ASSEMBLY.

The Government of the Province may be contemplated under three heads, corresponding with the legislative, executive and judicial functions, with which it is clothed, and which are discriminated with as much precision as is perhaps practicable in any young community : the legislative authority being exercised by the General Assembly, the executive by the Governor with the aid of the Council, and the judicial held by the Judges and Jurors of the different tribunals appointed for the administration of the laws. We will begin with a description of that body from which the laws emanate, next the officers entrusted to watch over their execution and enforcement are to be pointed out. The courts of justice will be described in another part of this epitome.

It appears to have at all times been a part of the prerogative of the English crown to establish in the Colonies, and in conquered and ceded territories, such governments as the monarch found expedient, and the Parliament has seldom interfered, and never took upon itself the exercise of this branch of authority, unless specially requested by the executive, with the exception of that

period of English history in which a republican form subsisted for a few years. This extensive power, embracing as well legislative as executive and judicial power to the fullest extent, is indeed found to have been modified in its use by several causes. The general interests of the British nation have been considered,—the rights of the conquered or aboriginal people of the countries conquered or planted, whether secured to them by treaties or respected from the high and transcendant principles of justice,—the terms agreed on and offers which have been made by government to the British settlers and planters,—have had their due weight in shaping the regulations and orders of the crown, in the management of colonies. From these causes forms of government have arisen in most instances in which the powers of the crown have been well adjusted and defined; and in few if any of the colonies, has it retained a power of any greater extent than it possesses in the constitution of the mother country. As in the ancient times of England, the people gained by successive grants and concessions that adequate share of power and liberty they now enjoy, so in the progress of society in these young countries, have the subjects acquired, by the concessions of the crown, a fair and legitimate share of power—commensurate at least with the progress of wealth and population, and this has happily been effected without the convulsions which took place among our ancestors in Europe.

From the acquisition of Nova-Scotia in 1713 till 1749 a kind of civil government existed at Annapolis, in the title of Governor held by the commanding officer of a regiment stationed there. He had also a few counsellors, such as his major and senior captains to assist him; but his post was a little village, and the French Acadians allowed all their affairs to be managed by their *curés*, having among them neither magistrates, lawyers, nor any kind of civil officers. The English did not attempt colonization here

till 1749, when the appointments of governor, lieutenant-governor, and counsellors, were conferred on the commanders of the troops and principal colonists at Halifax, who erected courts of justice, and passed ordinances, and under their rule the colony was managed until 1758. In that year the governor was instructed to cause representatives of the people to be elected, who were to form a branch of a general assembly, like the older continental assemblies of Massachusetts, Virginia, &c. A few years before, a chief justice had been appointed, the late Jonathan Belcher, Esq. who was highly qualified by education and talent for that office. He was a native of Massachusetts, and to his exertions it may be presumed it was owing that the government and the tribunals of the colony began rapidly to assume an appearance of order and method, and his legislative exertions contributed much to procure for us the simple and elegant structure of laws which long experience has rendered an object of public attachment.

At first the representatives were all elected at Halifax, —the erection of new counties with county members, and the addition of members for certain townships, have gradually brought it to its present form. At an earlier period the governor and council by their own authority altered the representation. This was an irregular proceeding. See AttorneyGeneral Raymond's opinion in 1723.—1 Ch. Op. 269.

In certain cases, acts of the imperial parliament have been passed, affecting the colonies—and the extent and nature of its power in that respect have been the subject of much discussion and enquiry, but as those acts are confined to the regulation of external commerce, and are hardly within the scope of our present investigation, we shall confine our attention to that legislature which belongs to the colony itself.

Of this, his majesty is the head, and his assent is necessary to the enacting of every law. In the general assembly he acts by his representative the governor. His majesty may, after an act has received the assent of his representative, put his negative on it, which annuls it; but in the interim between the assent given by the governor, and the notification of the dissent of his majesty, the act is a law and acted upon as such. On this account the governor has instructions, by which he is restrained from assenting to certain kinds of laws, until they have been submitted to his majesty's government in England, particularly where the peculiar rights or prerogatives of the crown are concerned. Some doubts exist as to the period during which the power of negativing a law passed in the colony, subsists in the crown. In practice no difficulty has arisen on this ground, as all bills and proceedings of the colonial assembly are annually transmitted to his majesty's government, and where it has exercised this negative, it has been done with promptitude. To avoid the necessity it has become the regular usage, to add a suspending clause to every act which it is thought the crown may possibly disapprove, by which it does not operate till its approbation is received from England.*

The constituent parts of the assembly are, the governor representing the king in his royal legislative capacity,

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"* When an act of assembly has received the governor's "assent, it must be sent home to Great Britain within three "months, for his majesty's approbation or disallowance. If "it receives his majesty's approbation, the same is signified "to the governor by an order of the king in council."—Stokes p. 251.

"If a governor has the least doubt whether an act of as-"sembly, to which he is requested to give his assent, is con-"stitutional or else infringes on his majesty's prerogative;—in "that case if he does not reject it, he ought at least to refuse "his assent until both houses of assembly agree to add a "clause to such act, suspending the execution thereof until his "majesty's pleasure is known."—Idem, p. 254.

his majesty's council sitting in one chamber, and the representatives of the people in another.* The governor opens the sittings of the whole body, taking his seat on the throne in the chamber of the council, who are there assembled, and by message he then orders the attendance of the representatives. When they have arrived, he in a short speech informs the council and assembly of the state of the country, its progress, its finances, and the objects that demand their consideration. All this is transacted in the most public manner. He continues during their sittings to communicate with both chambers by written messages, and when bills are ready to be assented to or negatived, he meets them in the same form, with which also he closes their session.

The manner of calling a general assembly is by the order of the governor to the secretary of the province. The latter prepares writs in the governor's name, directed to the sheriff of each county to cause representatives for his county and its townships that send members, to be elected. Those writs are signed by the governor, and sealed with the great seal of the Province, which he has in his custody as chancellor, and are countersigned by the secretary. A proclamation is published in the Gazette at the same time in which the calling of the assembly is stated. The Governor also dissolves it by his proclamation, and its prorogation from session to session is intimated by the President of

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"* The general assembly consists of the Captain General "and Governor-in-chief, (or in case of his death or absence, "of the Commander-in-chief for the time being), that twelve "members of the council, and the house of representatives "chosen by the people, which representatives are more or "fewer, according to the extent of the colony."—Stokes, p. 241.

The word "Governor" is frequently used in this work, although the functions of the office may be exercised by a Lieutenant Governor or a senior Counsellor, in the absence of either.

Council, at the governor's command, publicly at the close of the session, in the council chamber, when the three branches are met together. By the tenor of the Royal instructions the governor is bound to bring the asssembly together once in every year. An act, passed in 1792, 32, G. 3, 1 Prov. L. p. 298—limits the duration of each assembly to seven years, to be computed from the day named for its first meeting in the writ of summons. His Majesty or the governor may, however, dissolve it before that period, if thought necessary.

Although the Governor, by his official speeches and messages, often suggests and recommends measures to the council and representatives, yet every measure which assumes the formal shape of a bill must originate in the council or the lower House, the power of the Executive being simply to assent or negative the bill.* The negative power is seldom if ever exercised by the governor, as the council being also his cabinet and privy council, are in general aware of the views and interests of the executive of which they form a part, and they usually reject such measures from the lower house as would be inconvenient or disagreeable to the crown, or its representative, the Governor.

The Council are twelve† in number, holding their office at the pleasure of the crown.‡ They sometimes are appointed by the governor, and sometimes their appointment ori-

* Acts of grace in England begin with the Crown. We have no instance of an act thus originated in this province.

† An addition of 3 has been made by the Crown, to their number since the above was written.

" ‡ The council, or (as it is called) upper house of Assem-
" bly, is an humble imitation of the house of Lords,—Stokes p.
" 243. The proceedings of the houses of assembly, in the
" Colonies are conducted, and their journals kept, in a manner
" much conformed to those of the two houses of Parliament,"
—idem, p. 243.

ginates in England, but they always receive a writ of *mandamus* directed to the governor which fixes their rank and precedency. They have generally included the principal executive officers of the colony—the bishop, the chief justice, and some other of the Judges, but this is altogether at the discretion of the crown, which can appoint any persons to the situation. There are also generally two or three merchants of the wealthiest class. There is no particular remuneration assigned to them for the duties of this office, which are certainly burthensome, as they have judicial and executive functions to perform, besides legislative duty; but as they are nearly all salaried men,* holding the best situations in the colony, and as the rank of counsellors gives them influence and precedency, and the title of honorable, it has not been found necessary to give pay for their legislative attendance; which would be required if a distinct body of men not holding public offices of a lucrative nature, were appointed. It is not usual with government to name any new counsellor who is not understood to be acceptable to most of the board.

The house of representatives, or as it is usually called the house of Assembly, consists of 41 members. Of these there are 4 members for the county of Halifax, for the other nine counties, 2 members each. For the town of Halifax, the capital of the Province, 2 members, and for the townships of Truro, Onslow, Londonderry, Windsor, Falmouth, Newport, Amherst, Horton, Cornwallis, Annapolis, Granville, Digby, Shelburne, Liverpool, Lunenburgh, Barrington and Yarmouth, being seventeen in all—one member each. Thus there are 22 members for counties and 19 for townships. (See appendix, as to additional members for Cape Breton.)

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* A change has been made in this respect since the text was written, as vacancies occurring are no longer filled up with official men.

Reserving such authority as the parliament of the mother country may hold for the general interests of the Empire, over this portion of it, and particularly the full operation of those acts of parliament which regulate the king's troops, and the custom house establishment in the colony, the whole sovereign legislative power is exercised by the general assembly of the province, which makes, alters, or abrogates the law, and levies taxes on the people, upon the same footing that parliament does in the united kingdom. —It is said that the rules of law, which govern the proceedings of a provincial assembly, are not *of necessity* analogous to the rules of parliament, but depend on the constitution and usage of the colony itself.—2 Chalm. opin. 3. The attorney general Pratt stated the constitution of a provincial house of assembly, to differ widely from that of the British house of commons, the latter being governed by the *lex parliamenti*, or its own precedents, the former regulated by the *common law and colonial usages*. 1 Chalm. op. 263. By the law and usage of parliament adopted here, no member can sit in either house who is under the age of 21 years. It has also been the usage, probably under a royal instruction, that the governor and the members of council on entering office should take the oath of allegiance, and the several oaths against the exiled family of Stuart and the Roman Catholic religion. Members of the lower house when elected have also to take the same oaths. The oaths against the Roman Catholic religion, were not required of a gentleman of that persuasion who was elected for the county of Cape Breton at the re-annexation of the Island, as his majesty remitted them by special instruction—and it is to be hoped that the liberal construction of the Catholic relief Bill will abolish their future use.* The present assem-

* The assembly of Nova-Scotia, since the above was written, have passed an act which gives the fullest relief to Catholics. See appendix.

bly of Nova-Scotia* unanimously joined in addressing the Crown for their repeal about two years before the passing of the relief bill. Dissenters have always been freely admitted to all public offices and situations in the colony, without any test, and when this remnant shall be removed, there will be no religious distinction remaining in our Provincial code. Those oaths are administered to members of assembly by certain Commissioners (members of Council) appointed for that purpose at the opening of each new assembly, who also attend from time to time at the request of the Speaker of the House, whenever a new member is to take his seat and swear him at the clerk's table, in the assembly room.

The Privileges of the Assembly.

Freedom of speech, the most prominent of the privileges enjoyed by legislators, is secured by the British statute of 1, W. & M. st. 2, c. 2, which enacts "that the freedom of speech and debates, and proceedings in Parliament, ought not to be impeached or questioned in any court or place, out of parliament." At the opening sessions of every new assembly, the Speaker demands of the Governor in the name of the house, the freedom of speech in their debates, freedom from arrest, and personal access for himself to his Excellency, whenever public business should require it. The personal freedom from arrest extends to all civil process, and also all criminal, except treason, felony, or actual breach of the peace.

Formerly the writ of privilege was the mode by which any breach of the freedom from arrest could be investigated, but by the usages of parliament, all parties concerned in the arrest of a member, will be made liable to punishment by the house, for a contempt of its privileges.

* Another assembly has been chosen since writing the above.

The peculiar rights of the Legislative Council.

The members of Council exercise the right of entering individually a protest on the journals of their body, setting forth the reasons for which they may respectively dissent from any measure or vote of the majority. It is stated in the continuation of Hutchinson's History of Massachusetts, p. 54. that such protests were not used in that Province before 1757.

It is their usage to deliberate with closed doors, and in private. This was at an earlier period the usage of both houses in Nova Scotia It was on the motion of the late attorney general, the Hon. Mr. Uniacke, then a member of the assembly, that permission was given to open the doors of that body to the public, about 45 years since.

It seems probable that the practice of deliberating with closed doors in the Council when sitting in their legislative capacity arose in the British Colonies from the circumstance of their being also a privy council or executive cabinet. The habit of meeting frequently in private, and the little regard paid to the forms of proceeding in Massachusetts, and the other early English settlements, appear to have led to the adoption of a mode different from that of the upper house of house of parliament. As an open and high Court, its proceedings under the British system of law would be, constitutionally, public. It is that which has made it the constant practice to open the doors of the Legislature, in England and her Colonies, whenever the acts of the parliament or assemblies are about to be adopted by the regal assent. Every branch of tribunals so dignified and trusted will of course from their nature, retain the discretionary power of excluding strangers from their deliberations, whenever they see just cause; but a total exclusion from the upper or lower chamber seems anomalous and inconsistent with the principle, as well as the usages

of the British constitution and it often exposes the acts of the upper branch to an unfair and unfavorable construction.

No instance has been known in this province, of the Council arresting any person for contempt of their House, though the Lower House has often done so. The Council of Lower Canada have just now arrested two Editors of papers at Montreal.

It is asserted in Chalmers' opinions, 1st vol. 223, that a colony of English subjects cannot be taxed but by their representatives, but that a conquered country may be taxed by the crown.

The Governor and Council of Nova Scotia have never possessed a legislative power when acting without the representatives of the people.*

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* "The opinion of the Attorney and Solicitor General, Murray and Lloyd, on the question whether the Governor and Council have the power of making laws."

"To the Right honorable the Lords Commissioners for "trade and plantations.—May it please your Lordships—

"Pursuant to your Lordships' desire, signified to us by Mr. Hill, in his letter of the 31st of March last, setting forth that a doubt having arisen, whether the governor and council of his majesty's province of Nova Scotia have a power of enacting laws, within the said province, and Jonathan Belcher, Esq. having transmitted to your Lordships his observations thereupon, enclosing to us a copy of the said observations, together with copies of several clauses, in the commission and instruction of the said Governor of that Province, referred to, (all which are herewith returned,) and desiring our opinion, whether the said Governor and Council have, or have not, a power to enact laws, for the public peace, welfare, and good government of the said province, and the people and inhabitants thereof: we have taken the said observations and clauses into our consideration, and are humbly of opinion, that the Governor and Council alone are not authorized by his Majesty, to *make laws.* Till there can be an assembly, his Majesty has ordered the government of the infant colony, to be pursuant to his commission and instruction, and such further directions as he should give, under his sign manual or by order in Council."

W. MURRAY,
RICH. LLOYD.

April 29, 1755. 1. Chalm. opin. 261. 2.

Peculiar rights of the Representatives.

It is the indisputable right of the lower house that all money grants begin there. In addition, it is the rule that no amendment or alteration of a money bill, or of any bill or act which in any way imposes a fine or pecuniary burthen on the people, can be proposed by either of the other branches, or received from them in the Commons House. Any attempt of the kind, though even inadvertently made, is sure to be treated as an infringement of the privileges of the representatives of the people, who alone are to exercise the right of granting to public purposes the money or property of their constituents. The chief guards on the freedom and safety of the Assembly, are found in the precise regulations of the law on the subject of electing its members. The law of the Province, passed in 1817 has defined the qualifications of the electors and candidates, and pointed out the mode of conducting elections. 57. G. III. c.7.3.P.L.5. Every elector or candidate must have an actual income of forty shillings *per annum* in freehold, or a dwelling house, with the ground on which it stands, or one hundred acres of land, whereof five at least shall be under cultivation. This estate must be situated in the county or township for which the election is held, and must be an estate of freehold. If acquired by grant from the crown, or by purchase, the grant or deed of conveyance must have been registered six months before the teste or date of the writ for the holding the election. If his estate be acquired by heirship or will, it may be voted on or will qualify him as a candidate at once. It has not been agitated whether females may vote or sit. In Lower Canada they vote at the elections of members. By provincial act 4 & 5 G. IV. c. 22, 3 P. L. 188, persons holding lands in Cape-Breton, by licence of occupation or crown lease ob-

tained from the former government of the island are authorized to vote at the elections in that county, and also those who derive title under them.

As soon as the sheriff receives the writ for holding an election, he is to endorse on it the date of receiving it, and immediately to give public notice of the day and place of election, by putting up advertisements at least ten days before the time of the election, at five of the most public places in the county or town, and at the time appointed at the county court house, (if a county election) or in the most central and convenient place (if a township election) between the hours of ten and twelve A. M. proceed to read his writ—then appoint two freeholders as his assistants or clerks in holding the election, who are to be sworn. The sheriff is forbidden to declare the choice upon the view (that is by the holding up of hands, or acclamation) he is not to adjourn from that to any other place without the consent of the candidates, nor by any unnecessary adjournment to delay the election. If a poll be required he is to take it from day to day, until all the electors present are polled. By consent of all the candidates, he may close the poll before, but he may by proclamation close it, if for the space of an hour no voter appears. If a scrutiny is demanded, it is to be commenced on the day after the close of the election, by the sheriff and two of his assistants, when every vote objected to during the election, and so marked on the poll books, may be scrutinized. On this scrutiny the sheriff merely take evidence, and does not decide on the disputed votes, but returns the evidence to a the Assembly, to be there tried by a committee. Each candidate has a clerk and inspector sworn by the sheriff to take the poll fairly, and the sheriff is bound to give a copy of his own poll book to a candidate who demands it.

Any elector whose vote is questioned is to be sworn to

the following oath :—" I. A. B. do swear that I am by law " entitled to vote in the county or town of——in the Pro- " vince of Nova-Scotia ; and that the lands, tenements or " hereditaments, for which I claim a right to vote consists " of——, and are situate, lying and being in —— and the " same hath or have not been made or granted to me fraudu- " lently on purpose to qualify me to give my vote ; and " that I have not received, or had by myself or any other " person in trust for me, or for my use and benefit, direct- " ly or indirectly, any sum or sums of money, office, place " or employment, gift or reward, or any promise or secu- " rity for any money, office, employment or gift, in order " to give my vote at this election, and that I have not " before been polled at this election, and that the place " of my abode is at ———————— So help " me God." If Quakers, their affirmation to the above effect. The freeholder refusing to take the oath is not suffered to vote. All fraudulent deeds to make fictitious votes, with conditions to recovering the property, are made free from such condition and a fine of ten pounds incurred.

A candidate objected to is to give a statement of his freehold to be entered on the poll book—and also to take and subscribe the following oath. " I. A. B do swear " that I am by law qualified to be elected for the town or " county of ——— and that the lands, tenements, and " hereditaments for which I claim a right to be elected " consists of ——— and are situated and lying in ———, " and the same hath or have not been made or granted to " me fraudulently, on purpose to qualify me to be elected, " So help me God." £200 penalty imposed on Sheriffs acting contrary in any respect to the act. Entertainment furnished at elections to freeholders is declared to be recoverable only from the persons entertained and not from the candidates directing it. Bribery and corruption of freeholders at an election are rendered amenable to " the

penalties prescribed by the laws of England, for such offences," which means £500 for every distinct act of bribery, by English statutes 2. Geo. II. cap. 24. explained and enlarged by 9. Geo. 2. c. 38. and 15. Geo. 2. c. 11. Bribery being also an offence at common law, may also be prosecuted by indictment or information, and punished by fine and imprisonment. 4 Dougl. 292.*

By Prov. act of 1830, 1 W. IV. c. 5. s. 2. when the freehold of a candidate is questioned and an oath required, "it shall "not be imperative on said candidate or agent to attend "in person to take and subscribe the same, but a deposi- "tion in writing (containing the description and situation "of the lands by which he claims so be legally qualified "as such candidate) made and subscribed by such candi- "date or agent, before one of the Judges of the Supreme "and Inferior Courts of this Province, and delivered to "the Sheriff or other proper officer holding said election, "shall be sufficient." Proviso, that the candidate, if elected before he takes his seat, or votes in the house, shall take the candidate's oath (if required) and shall deliver to the clerk of the house the title of deeds of the property by which he claims to be qualified, or true copies of them.

This act of 1817, must be read every day of the election, for the information of the by-standers. The poll can be kept open for 6 days only at one place, at the close whoever has the majority of votes is declared elected and summoned to attend the assembly. The sheriff is allowed 10s. per diem at the poll and scrutiny from each Candidate.

In certain of the county elections in the more extensive counties, on application of a candidate or a freeholder

* In the case of O'Brien, q. t. vs. Smith, a question is pending before our Supreme Court, whether the penalties of English Statutes are in force under the words "laws of England."

acting for him on the opening day of the poll, the sheriff is to take the votes there, and then adjourn to the other places of holding the election, by giving notice that on the eighth day from its opening at the first place of polling it will continued at the 2d place. and in the same way shall continue it to the 3d if required. Act of 1817, 57, G. 3. c. 7. & 4. and 5. G. 4. c. 22, 1824. The following is the arrangement of the places of holding the poll by the several acts of 57, Geo. 3, c. 7.—58, Geo. 3, c. 29, 4 Geo. 4, c. 22, and 10, Geo. 4, c. 9.—1830, 1. W. 4. c. 5. s. 1.

Halifax, Co.	At Halifax, 6 days.	Truro, 4 days,		
	Pictou, 6.			
Annapolis,	At Annapolis, 6.	Sissaboo, 4.		
Kings, -	At Kentville, 6.	Parrsboro, 4.		
Shelburne,	Shelburne, - 4.	Barrington, 4.	Tusket, 4, & Yarmouth, 4.	
Sydney,	Guysboro', - 6.	Sherbrooke, 4.	Antigonish, 4.	
Cumberland,	River Philip, 1.	Wallace, 2.	Amherst, 3.	
Queen's,	Liverpool, - 6.	Brookfield, 4.		
Hants, -	Windsor, - 6.	Douglas, 3.		
Cape Breton,	Sydney, - 6.	Arichat, - 4.		
	Port Hood, 4. days.	Cheticamp, 4 days.		
Lunenburgh,	Lunenburgh, 6 days.			

In all the township elections the number of days is six.—The periods thus fixed are the longest to which the poll can be kept open by law—in the event of the voters being exhausted or neglecting to attend, it becomes the duty of the sheriff by proclamation to close the poll at each place, if no vote is offered during the space of one hour.

The hours of the day at which the elections are to be closed are fixed as follows :—by act 4 and 5, Geo. 4. c. 22. If the election takes place between the 22d day of September and the 22d March, it is daily to adjourn at 4. P. M.

and if between 22d March and 22d September, inclusive—to close at 6 P. M. On the last day appointed at each town or place of polling—the poll must close imperatively at 3 P. M. at all seasons of the year. The adjournments of the poll to different places are also to be publicly notified and new assistants may be appointed at each place. Before any member can vote or take part in the proceedings of the assembly, the house if applied to may order him to give in a schedule of his qualification as to real estate to be filed by the clerk of assembly. The election being closed the sheriff returns the writ with his proceedings endorsed to the Secretary's office, whence it is transferred to the files of the house of assembly, at its next sitting. The member having the majority of votes on the poll book is returned and takes his seat. The papers containing the evidence on the objected votes accompany the writ where a scrutiny has been held. If there should be any thing in the proceedings sufficiently wrong to vitiate the election, or if on the scrutiny, the majority should be destroyed by the badness of the votes or want of qualification in the person returned, the mode of obtaining redress is by the petition of the candidate not returned, or petition from any of the freeholders to the assembly, which forms the groundwork of enquiry into the regularity of the election by a committee of the House. This inquiry is carried on according to the terms of the Provincial act, 1 & 2, G. 4. c. 17. By this act whenever a petition shall be presented complaining of an undue election or return, a day is to be appointed to consider it, of which the speaker is to give notice in writing to the petitioner and sitting member,—on which day if 27 members are not present, the order is adjourned *de die in diem* to a particular hour. When 27 are met, the Petitioner with his counsel or agents are brought to the bar with the counsel or agents of the sitting member, the door of the house is then locked and no member is allowed to go in or out, the order of the day

is then read, the names of all the members of the house are put into two ballot boxes, the clerk draws a name publicly from each box alternately handing it to the speaker who reads it aloud, till 15 names are drawn. Members who have voted at the election complained of, and those whose own returns are petitioned against are set aside. Members making on oath a satisfactory excuse may also be set aside, other names are to be drawn to make up 15, then each party names a member to be added who is called their nominee, and he must be one not drawn in the ballot. At this stage of the proceedings the doors are re-opened and the house may proceed to its ordinary business. Each party receives a list of the seventeen names from the clerk. Both parties and their counsel retire with one of the clerks and an hour is allowed them to strike off names. The petitioner begins by striking one of the 15, then the sitting member strikes another, and so on alternately, till 8 are struck off, leaving 7 and and the 2 nominees, in all 9 members. They return to the house, and the nine are then sworn at the table to try the subject matter of the Petition. The House then appoints a time for them to meet in one of the committee rooms, prepared for the purpose. They are to sit every day except Sundays, Christmas day, and Good Friday, and cannot adjourn for more than 24 hours, without special leave obtained from the house. They elect a chairman when they first meet. He must not be one of the two nominees. If they are equally divided in choice of a chairman, the member whose name was earliest drawn at the ballot has the casting voice. The same mode is to be pursued on the death or necessary absence of the chairman first elected.

The committee has power to send for persons, papers and records, they are to examine witnesses on oath (a power not exercised by the House itself.) They are to determine by a majority of voices whether the petitioner

or the sitting member be duly retu ned or elected, or whether the election is void—"which determination shall be final between the parties to all intents and purposes," the house on the decision being reported by the Chairman of the Committee, are to enter it on their journals and cause it to be carried into effect. Members of the Committee are not to be absent from it without leave of the House. If it is reduced below five for three days, by unavoidable causes, it is dissolved and a new one must be chosen. If witnesses misbehave, it is to be reported to the House. They are empowered to clear their room of all persons but the Committee, when they wish to deliberate privately. All their acts are to be by a majority of votes. If five at least do not concur their decision may, if the house see cause be referred to another such committee. The chairman is to swear the witnesses. If the committee report the Petition frivolous or vexatious, the subscribers are made liable to pay costs to their opponents.

Besides the qualifications of property required by the Act of 1817, candidates and electors must, according to the usage of Parliament which has been adopted in the colony, have other qualifications. The early and constant practice of Parliament has created several disabilities, and English statutes passed before the establishment of the colony have disqualified certain descriptions of persons. Those statutes, having been enacted as guards to preserve the principles of our free constitution unimpaired, and to protect the rights and privileges of Englishmen, by preventing improper influence from warping the representative body from its legitimate purpose, may be considered peculiarly applicable to our colonial circumstances. I am not aware whether any questions have arisen before any Provincial Court where their validity has been settled, but it would upon general principles be probable that they would be confirmed and acted upon.

The jealousy of the Commons as to their elections has induced Parliament by Acts 9 Ann c. 10, s. 44—12 and 13 W. 3, c. 10, s. 91. and 9 Ann, c. 11. s. 49. to forbid the interference of all the officers of the Post Office establishment,—of the Excise and of the Customs, and other duties from interfering at all in any election of members of Parliament, and the House of Commons has declared it to be an infringement of their liberties for any Peer or Prelate to concern himself in elections, or in a Lord Lieutenant or Governor of a County, to use his official influence for such purposes, and that it is highly criminal for any minister or servant of the crown to use the powers of his office for electioneering.—See 57. Journal 5, 376. 34 (345). and 17 Journal, 507.

The following persons are disabled from voting by decisions and usages of the House of Commons.—Aliens, (1 H. C. 157. Idiots, (H. C. 164, 165.) Lunatics, though not declared such (H. C. 164, 165 ` Outlaws for crime, (H. C. 219. Sim. 27.) convicted Felons. (Phill. 170, H. C. 386.) Persons attainted (Sim. 55. 5, T. R. 117.)

Disabled from voting by Statute.

Infants under 21. (7 & 8, Wm. 3. c. 25, s. 8.) All others are considered as qualified to vote. Therefore denizens, the candidates and the returning officer himself may vote, and instances are not wanting in England of a candidate voting for himself.

Disability to sit in the House, does not always imply disqualification from being elected. The persons disabled from sitting may by removing the cause of disability take their seats.

Disabled from being Elected.

The following are disabled from being elected by usage and law of Parliament. Idiots, lunatics, persons deaf and

dumb, women, aliens, denizens, traitors, felons, persons declared incapable of being elected by the house, members unless they first vacate their seats (Sim. 40.) the returning officer (for his own precinct,) Judges. (Journal, 9 Nov. 1605.)

The following by older statutes, cannot be elected, viz.: Infants (7 & 8 W. 3. c. 25. s. 8.) Naturalized foreigners (12 & 13 W. 3. c. 2.) Pensioners (6 Ann. c. 7. s. 25.) Commissioners of the navy at out p[illegible] —prize commissioners, secretary and receiver of [illegible], and commissioners of sick and wounded, comptr[illegible] of army accounts and agents of regiments. (6 Ann. c. 7.)

Disabled from sitting.

The following by statute cannot sit:—A member accepting any office of profit under the Crown, until he vacates his seat and is re-elected. (6 Ann. c. 7. s. 25.)—Officers of the Customs. (12 & 13 W. 3. c. 10.) of Excise. (11 & 12 W. 3. c. 2.) Besides these, in the reigns subsequent to Anne, a great number of disqualifications have been created by statute on different classes of officers of government and revenue.—I will not detail them as I should conclude the statutes of Great Britain, do not bind this Colony unless where the province is named in them, or when they were passed before the settlement of our Colony, and are affirmative and declaratory of the common law and applicable also to our situation. Votes given to a candidate are thrown away, if notice be given before the vote of his ineligibility—if it be notorious, no notice is required. 38 Journal. Ib. 245. 415. 689.—37 Journal. 500. 560. 561. 10. East. 211.

With these exceptions and another which will be mentioned, all persons are eligible—and therefore prisoners for debt, persons abroad, persons already elected for another place, not yet having taken their seats. 8 Journ.

392. Hale's Par. 116.—13 Journ. 335. 358. Sim. 40.—the attorney and solicitor general, the master of the rolls, masters in chancery, officers in the army, navy &c. may be members of Parliament.

By Prov. act 4. G. 4. c. 8. the first justice of the Inferior court, cannot vote or take part in elections or hold a seat in the assembly.

A person elected against his will is yet bound to serve. 1 Dougl. 281. Glanv. 101. 4. Inst. 49. A person chosen for more places than one, must make his election. A decission of the House of Assembly at a former period, confirmed the vote of a person deaf and dumb given at an election —and officers of the customs have sat in that house repeatedly without question made. But the board of customs recently required a member who was also a collector at an out port, to remain at his station during the session of the house.

The officers of both Houses.

It has been asserted and probably with truth, that in the earlier colonies the Governor used to sit with his Counsellors in their legislative deliberations, act as their Chairman or President, and take a leading part in their discussions. They further conclude that the Governor and Council composed but one chamber, acting as one branch only of the legislature, and were not possessed of distinct rights and powers in that respect. It appears by an opinion in Chalmers, that the Governor cannot vote in the Council, sitting in its legislative capacity. 1. Chalm. 231. However, that may have been, the public proceedings in 1758, in calling the first representative assembly of Nova-Scotia, defined the three branches as distinct, and they have continued to act separately to this day.

In the Council since 1763, the Chief Justice of the Supreme Court, has always acted as President. In his ab-

sence or in a vacancy of the office of Chief Justice, the chair has been filled by a senior member.

His duties are to preside in all their deliberations, except when they are in committee, and to take the votes. He also at the prorogation declares the assembly to be prorogued on the part of the governor.

The other officers are the Clerk of Council or Deputy Clerk—whose duty is to register their proceedings—and to carry the ordinary messages of intercourse whether verbal or written to the lower house, the Chaplain who attends every morning to say prayers before the business of the day is introduced, the door keeper and the messenger whose titles bespeak sufficiently their functions.

The Speaker presides over the house of representatives, he must be a member chosen from among the rest by the majority of votes. The clerk takes those votes, and declares the election; he is then conducted to the chair, but before he acts further in that capacity he is presented to the Governor, and having been approved by him, he then enters upon his duties—an instance has occurred in this province, where the Governor refused his approbation, and on that occasion, the house departed from their choice and elected another to the chair who was accepted.* The right of persisting in such a refusal has been much disputed, and in the reign of Charles 2d. the proceedings in Sir Edward Seymour's case, terminated in a kind of tacit compromise, between the King and the Commons. The proceedings in Lower Canada, respecting Mr. Papineau, under Earl Dalhousie's administration, where the assembly persisted in re-electing the refused person and proceeding to business, have caused much enquiry into this disputed point, and as it seems the right of the Crown to refuse peremptorily is

* Mr. Tonge's case in the time of Lieutenant Governor Wentworth.

subject to much doubt, the claim of a Governor to exercise so dubious and delicate a prerogative must be much more problematical. (See Burnet's history of his own times.)

The Speaker sits in the chair and takes the votes in all the more formal and regular debates and proceedings. When in the chair, he reads the resolution or other matter or directs the Clerk to do so. He puts the question, reckons the numbers on both sides, and declares the result. While in the chair he takes no part in any discussion, but interposes occasionally on incidental questions regarding the order, and decorum of the proceedings. In all questions concerning the forms of the house he acts as the judge, unless their novelty or importance induce the house to refer them to its standing committee of privileges. The Speaker gives no vote while in the chair, except the members present are equally divided, and then he gives the casting vote which in money questions is to be given against granting money. In all cases a simple majority decides the question. Those votes are given openly, and *viva voce* and each member is entitled if he think fit to state the reasons that sway him, at as great length as the house is inclined to hear from him, taking care not to speak more than twice to the same question in the house, that means the speaker presiding.—If the chair be filled otherwise, then members may speak to any question as often as the committee is disposed to hear them. When a seat in the house becomes vacant by the death of a member or otherwise, the house directs the speaker to communicate the fact by letter to the Governor, and to request him to cause a writ to be issued to fill up the vacancy. Whether the Governor could issue a writ for a vacant seat in the assembly, without receiving a message from the house, to call on him to do so, was made a question in 1755. in, Jamaica but no opinion was

given by the crown lawyers. See 1 Chalmers opin. 296. 2 do. 3.

The other officers of the house of representatives are the clerks, who register the proceedings and copy the bills, &c. The chaplain, whose duties are similar to those of the chaplain of council; the sergeants at arms who attend to execute any orders the house may give them, for summoning or arresting any parties—for preserving order in the galleries, lobbies, &c. and preventing the ingress of strangers* without the permission of the house;—and the doorkeepers and servants, &c. Each house appoints its own officers.

The manner of passing Bills.

This is nearly the same in both the chambers. If the bill be of a private nature, a petition must be first presented by a member, and then leave obtained of the house to prepare and bring in the Bill, a committee of three or four is generally named to prepare it. A public bill is either introduced by a member who asks for leave to present it, on which it is usually read a first time as a matter of course, or (as frequently practised when it is wished to pass an act of importance,) a large and respectable committee is appointed to prepare the draught of a bill—the chairman of the committee usually draws it up and submits it to the other committee men, and when it is modelled to the satisfaction of a majority of the committee, the chairman offers it to the house, as the result of their labors. This saves much trouble. It is then read a first time. The bill when first read has generally a number of blanks in it for sums of money—periods of time, and every thing that is dubious, or on which difference of opinion is most

* Strangers, i. e. all but members and officers of the house, must withdraw when the speaker so directs, and he is bound to do so at the instance of any one member. It is not done on a division, as it is in England.

probable. Its progress through the house is divisible into 5 distinct stages—the 1st and 2d reading—commitment,—3d reading, and—motion that it pass. Sometimes it is committed on the 1st reading, and sometimes it is not committed at all.—(D'Ew. 1769.—6 Feb. 1699) as where on the 2d reading there is no objection to the bill, nor any blank to fill up. The house frequently permits the reading of the title to stand for the reading of the whole bill, as in practice the three or four readings at full length prove unnecessary and tedious. At any of those stages a bill may be opposed, but it is usual to debate on the second reading if the general object of the bill is disputed. After the 2d reading, the House takes it up again, when in Committee of the whole house to consider such bills as have passed the 2d reading, and in this committee, the several clauses of the bill are minutely considered and adopted, altered or rejected, and the blanks are filled up. To form the committee of the whole house, the speaker leaves the chair and may take a part as an ordinary member, the chair being filled by another member appointed for the purpose. After it has gone through committee, the chairman reports it to the house with any amendments that may have been agreed to, and then the house re-considers the whole bill again, and the question is repeatedly put upon every clause and amendment. When the house has agreed or disagreed to the amendments of the committee, and sometimes added new amendments, it is ordered to be engrossed—that is, fairly copied out as altered. When that is done it is read a third time, when also amendments may be made to it, and if a new clause be then added it is called a ryder. The speaker then recapitulates the stages through which it has passed, and puts the question that it do pass.* If this is agreed to the title is then settled, and

* Whenever the house is divided (except in committee of the whole) the names of members are all entered on the Journals, showing the side they vote on.

the bill goes by the hands of the clerk to his majesty's council for their concurrence. By "standing rule" a bill cannot be read twice in the same day, which is occasionally dispensed with by special resolution.

When the bill goes up to the Council, it there passes through the same forms it did below, except that it is not again engrossed, and if rejected no more notice is taken, but it passes *sub silentio* to prevent useless altercation. If agreed to, the clerk of council delivers a message to that effect at the bar of the house; and if agreed to with amendments, the amendments are sent down in writing with the bill. When the two chambers differ in opinion as to any clause or bill, or other matter that is supposed capable of being adjusted by mutual explanation, the course is to hold a conference between a select committee of each house, who receive instructions and report what has been said; but those committees have no power to conclude any arrangement, that being left to the vote of the chambers. —The same forms, *mutatis mutandis*, are observed when a bill originates in the upper house.

It is a rule of parliament that any measure, whether in the shape of a bill or otherwise that is rejected, shall not be again introduced in the same session.

The lower house claims and exercises the sole right of originating all bills of supply, and extends the principle to every bill, imposing any tax, charge or pecuniary penalty; and it is the rule of the House of Commons that all sums granted to the Crown shall be fixed in the Committee of Supply, which is a Committee of the whole. 18th Feb. 1667. 29th March, 1707. 11th March, 1716. 28th Feb. 1734. 11th December 1706. 11th June, 1713. See Hammond's Practice in Parliament.

The Chairman of the Committee of Supply, when the

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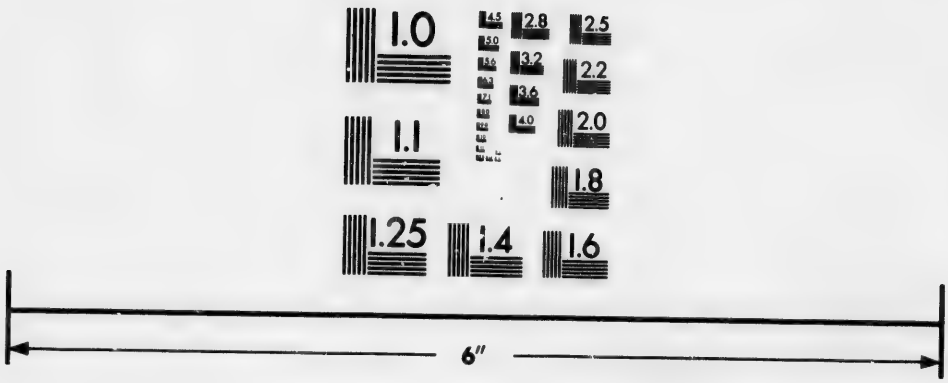

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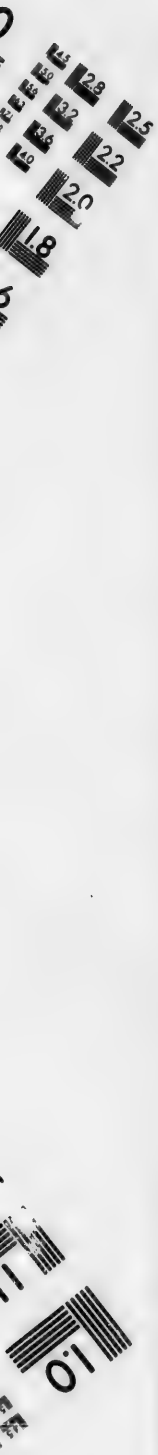
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members are equally divided on a question respecting the grant of a larger or lesser sum, or the longer or shorter time for its liquidation, is to put the question first for the lesser sum, and so for the longer time. 3 Hats. 183. 184. —In bills which are intended to raise revenue, the upper house are not to make any amendments, except it might be to correct a verbal or literal mistake. 3 Hats. 153. 154. —In other bills containing pecuniary penalties or impositions, they are not to alter the sums, the management or the disposal of them. 3 Hats. 154. 155.

In the consideration of questions not connected with bills it is usual to resolve the house into a Committee of the whole; such are the ordinary committee of ways and means, in which the revenue is annually settled, and the committee on private petitions. The same course exists in considering of addresses to the throne, or adopting such as have been prepared by committees. Select committees are frequent, and prepare and arrange most of the business for the consideration of the house. They are generally authorized to send for persons and papers, and take evidence (without oath) acting as courts of enquiry. The bill of supply is presented to the house by the Speaker, who in doing so, usually makes a brief speech to the Governor, suited to the occasion.

The regal assent is given usually by the Governor, as the representative of his Majesty, and for this purpose the three branches usually meet once before the close of the Session, in order to pass those bills into law, which have been agreed upon, as the revenue laws expire annually in March, and the house generally meets about the 1st February, and sits till the latter part of April or the beginning of May. At the close of the Session the Supply bill, and such others as are ready, are assented to by the Governor. The clerk of Council reads the title of each bill

and hands it to the Governor, who thereupon says, " I assent to this bill."

Bills with a clause suspending their operation until his Majesty's pleasure is known, receive their confirmation by notice from the Secretary for the Colonies to the Governor, who makes it known to the legislature and the public. —Sometimes a Governor reserves a bill himself, for the pleasure of his Majesty. This has rarely if ever happened in Nova-Scotia.

The acts when passed are published in the Royal Gazette, and an edition prepared, of which each member of the legislature, justice of the Common Pleas, justice of the peace, town clerk and excise officer is furnished *gratis*, with a copy at the public expense. See Journal H. of Assembly, 9th Feb. 1827. Copies are also transmitted by the Governor to the Colonial office, in England, where the acts undergo investigation by the law officers of the Crown.

A colonial act has the same effect in the colony that an act of parliament has in England, so a sale may be directed thereby to be made by a married woman, and an act of naturalization will have full effect within the precincts of the colony. 1 Chalm. opin. 344. 2d Chalm. op. 2.

Formerly acts took took effect from the beginning of the session, unless they contained a particular time—but by 10 Geo. 4. c. 26. " The clerk of council is to endorse the date on each bill of its actually passing, which is to be considered its commencement, unless where it contains a particular commencement." Very many acts are passed to have duration only for one, two or more years, and it is a principle of the constitution that revenue laws and militia laws shall be annual, consequently a committee is selected

every session to ascertain and report to the house the acts that are about to expire, and this committee also reports continuing bills to keep alive such acts as are thought necessary.

The expenses of the legislature are included in the yearly bill of supply, in which every sum is granted specifically, item by item, for the service of civil government. There are salaries to the speaker, the clerks, chaplains, &c. of both houses, and an allowance of about 20s. per diem, to the representatives, for the days of the session and of their journey to Halifax, and back to their homes.* The privilege of franking letters is not admitted by the Post-office, although a large sum, nearly £1000 is annually granted by the provincial assembly, in aid of the posts throughout the Province. This establishment being conducted under acts of the imperial parliament is not subject to the order of the provincial government. The privilege of members to be free from arrest having produced some inconvenience in its indirect effects, an act was passed in 1818, 58, G. 3. c. 11. by which a new execution is allowed, where the former is superseded by privilege of the party arrested under it, and the sheriff is relieved from any claim when he delivers a privileged person from such arrest. This privilege was decided not to free members from arrest out of session, except for a sufficient time to return to their homes in a recent case of Young v. Roach. Sup. Court. 1831. Privilege of Parliament does not extend to indictable offences, such as treason, felony, or breach of the peace.

Of adjournment, prorogation, dissolution, &c.

Each house can adjourn itself from day to day, or for one or more days by its own authority, the adjournment of

* The pay is usually limited to 42 days. When the house sits longer, it is without pay.

one chamber does not affect the other ; after adjournment, when met, business is taken up in the stage where it was left off on the preceding day.

Prorogation continues the assembly from session to session. It is made by the president of council, in the presence and by the order of the governor, and a day is then mentioned for the next meeting of the assembly. This day is usually postponed by proclamations at several periods until the usual time of meeting, the last proclamation expressing the day of assembling "for the actual dispatch of business." It is the duty of the governor to call an assembly together, to dispatch business once in every year. Both houses are of necessity prorogued at the same time, and though the same council meets very frequently in its executive capacity, it stands divested of all legislative character until it again unites with the two other branches in their session. The session cannot be otherwise terminated but by prorogation, although in construction of law unless some bill pass or judgment be pronounced there is no session—the effect of prorogation is such that all bills begun and not perfected must be resumed *de novo* (if at all) at any subsequent session.

The Governor can prorogue the general assembly, during its adjournment, or at any time, and prorogation is effected in law, by a writ issued and *tested* before the day of meeting of parliament, discharging the members from their attendance at that day, and appointing another for them to meet. This is usually notified by proclamation. In England some of the members attend on the day first appointed for meeting, and the writ of prorogation is then read ; but this meeting is not necessary, (nor is it ever practised in Nova Scotia, the prorogation being deemed effectual without it.) See 1. Chalmers' opinions 234.—236. —Dissolution takes place—1st, by the command of the

Governor expressed in person to the other branches, or by proclamation. 2ndly. In the event of a demise of the Crown, when the assembly is dissolved *ipso facto*, on the death of the reigning sovereign. (In England the parliament by stat. 7 and 8. W. 3. c. 15. and 6 Anne, c. 7. is to subsist for 6 months after—and shall assemble immediately after the event, and if no parliament exists the members of the last are to assemble.)* 3rdly.—By lapse of time. For by Prov. statute 32, G. 3. c. 10. 1. P. L. 298, it is enacted that each general assembly shall continue for seven years, unless sooner dissolved by the executive, the period to be computed from the day appointed for their first meeting in the writ of summons.

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* The change of Governors does not dissolve the General Assembly, 1, Chalm. op. 244, and although a Governor be superseded by a new commission to another, yet all laws passed and other official acts, done by him, before notice of his being dismissed or superseded, will be valid. ibid. 238.

If the members neglect to attend on the day appointed for the meeting of the General Assembly, or on a day to which they were adjourned, the Governor cannot issue new writs without a dissolution. 1, Chalm. Op. 270, 271.

It appears to have been considered doubtful whether the acts passed by a Provincial assembly, after the demise of a King, but before notice of the event had reached the Colony, were to be considered as nullified or held binding. The reader will find a very learned argument on this subject in the 1st vol. of Chalmer's opinions, 238, 303, 328. As to the necessity of waiting for official notice of the King's death. See the continuation of Hutchinson's history, page 88.

BOOK I.—CHAPTER III.

OF THE EXECUTIVE.

THE GOVERNOR.

The colonies being vice regal governments at a great distance from the residence of their monarch, he is represented in each by an officer, who under the title of governor or some other equivalent name, performs all the functions of the regal office which are necessary to the well being of the colony, subject to such instructions from the crown as may be furnished him from time to time. Those instructions which were established as rules for the guidance of the provincial executive, before the representative constitution was granted to this colony, stand upon a different footing from those of more recent emanation, and having been promulgated by what was then the sole legislative and sovereign power in the province, assume the character of laws and constitutions. Since the assembly was called into existence, it must be allowed that the powers and prerogatives of the crown have been lessened, and that any instructions since that period can only be considered as the acts of an executive government, and limited by the rules which circumscribe the prerogative in the mother country.

The governors of Nova-Scotia, previously to the year 1792, were styled Captains General, and Commanders in Chief, in their commissions. The appointment of a lieutenant governor used to be contained in them, and he acted in the absence of the governor. When both were absent, the senior counsellor was authorized to administer the government. In 1792 the style was changed, and since that date the commissions call them lieutenant governor and commander-in-chief. Their command is the same as it was before, being in no respect subordinate to any other colonial governor in the performance of their functions,—corresponding directly with the secretary of state. However as the governor of Lower Canada is, by his commission, captain general over all the northern provinces, when present in any of them, he may, I believe, assume the powers of government, but he does not in practice interfere with any of the other governors, each acting separately in his own province. In the absence of the lieutenant governor, the senior counsellor is governor, *pro tempore*, the present chief justice who is president of council not acting.

The Governor or other person exercising the functions of governor, must previously be sworn at the Council Board, taking the oaths of allegiance,&c. as directed in the royal instructions. This swearing into office is the regular form by which he is recognised, and he then sits in the chair, or throne in the council chamber. The landing, and procession of the Governor to be sworn in, is a ceremony conducted with much military parade, but in the case of Counsellors administering the office, they are generally sworn in a less ostentatious manner.

" A Governor on his arrival in the Province over which
" he is appointed to command, must, (agreeable to the di-
" rections of his commission and instructions,) in the first

" place cause his commission of Captain General and Go-
" vernor in Chief, &c. and also of Vice Admiral to be
" read and published at the first meeting of the Council,
" and also, in such other manner as hath been usually ob-
" served on like occasions. In the next place, he must take
" the oaths to government, and administer the same to
" each of the Council," &c. &c. Stokes on the Colonies, 177.

Extract from Stokes on the Colonies, as to the office and powers of Governor.

" Every Governor of a Province, by his commission of
" Captain General, and Governor in Chief, and by his
" commission of Vice Admiral, and the instructions which
" accompany them, is vested with the following powers:

1. " He is Captain-General of the forces by sea, and by
" land within his Province," " The Governor has also
" the appointment of all militia officers."

2. " As Governor in Chief, he is one of the constitu-
" ent parts of the General Assembly of his Province, and
" has the sole power of convening, adjourning, prorogu-
" ing and dissolving the General Assembly; he may also
" give or refuse his assent to any Bill which has passed the
" council and assembly. The governor has also the dis-
" posal of such employments as his Majesty does not dis-
" pose of himself, and with respect to such offices as are usu-
" ally filled by the immediate appointment of his Majesty;
" if vacancies happen by death or removal, the Governor
" appoints to such offices until they are filled up from
" home; and the persons appointed by the Governor re-
" ceive all the profits and emoluments of such offices, until
" they are superseded by the King's appointment of others."

3. " The Governor has the custody of the great seal,
" and is Chancellor within his Province, with the same

" powers of judicature, that the Lord High Chancellor has " in England."

4. " The Governor is ordinary within his Province; and " by virtue of the king's commission, he collates to all va- " cant benefices."

5. " The Governor presides in the court of errors, of " which he and the Council are Judges, to hear and deter- " mine all appeals in the nature of writs of error, from the " Superior Courts of Common Law in the province."

6. " The governor is usually named first in the stand- " ing commission, issued under the 11 & 12 Wm. 3. c. 7. " for the more effectual suppression of piracy."

7. " The governor is also Vice Admiral within his pro- " vince, but he does not sit in the Court of Vice Admiralty, " there being a judge of that court, who is usually ap- " appointed from England.—In time of war commissions " to privateers are issued by the judge of the court of vice " admiralty, in consequence of a warrant from the go- " vernor." Pages 184. 185.

Leave of absence.

The British statute of 22. G. 3. c. 75. declares that offices in the plantations shall only be granted by patent, during the residence of the grantee, and *quamdiu se bene gesserit*, (that is, during good behavior and not at the pleasure of the executive,) and on absence without leave or misbehaviour, the officer is removeable by the governor and council, who are authorized to give leave of absence when necessary. In case of death or removal, the governor and council may fill up offices, so vacated, *pro tempore*. The governor is directed to report every leave of absence thus given within a week after granting it. If it is not confirmed in England by the Government within one month after the report is received, the officer having leave is to return at once to his station or vacate office.

Responsibility of the Governor.

As the office of a governor is in the nature of that of viceroy, representing the Majesty as well as the authority of the Crown, he is therefore (locally) during his government not amenable to any civil or criminal tribunal; the reason is, because, he would otherwise be liable to imprisonment in a civil suit or under an indictment, which would be inconsistent with the dignity of his office and the unembarrased discharge of his important duties. If any complaint should arise against him, which involves a dispute between two adjacent provinces, as to the extent of the territory or seignorial rights of either; then as the rule of law is, that no question concerning the seignory can be tried in the tribunals which exist within the seignory itself, the conclusion is that the trial must be before the courts of the metropolitan government, having jurisdiction over the colonies, that is before the king in council. "So that emphatically the Governor must be tried in "England, to see whether he has exercised the authority "delegated to him by the letters patent, legally and pro- "perly, or whether he has abused it in violation of the laws "of England and the trust reposed in him." Mostyn v. Fabrigas. 1 Cowper 172. 173.

In order therefore that a governor who should so far lose sight of his duty and the honor a faithful discharge of it will confer, as to oppress and injure his fellow subjects over whose interests he has been deputed to watch, the British statute of 42 G. 3. c. 85. authorizes the court of King's Bench, in cases where oppression is proved against him to adjudge a governor incapable of serving the crown afterwards in any civil or military capacity,—and it enables the King's Bench to issue a mandamus to the colony, or a neighboring one, directing the colonial court to take the evidence on charges of this nature.

Governor's authority.

The governor appoints the different public officers of the colony on vacancies arising. The members of the council, sheriffs, justices of the peace, judges, officers of the militia, the commissioners of roads, of sewers &c. the law officers of the colony, the treasurer and a variety of others, receive their commissions from him; the customs and post office are not under his control. This authority is sometimes superseded by orders of the home government, who occasionally by *mandamus*, or commissions make a particular appointment, and all the appointments made by a governor are liable to be annulled if they are not satisfactory to his majesty's government. The office of lieutenant governor has been frequently united with that of lieutenant general in command of his majesty's troops in this and the adjacent provinces, by which the income and importance of the office has been augmented. The governor is officially the chief commander of the militia by the provincial acts, the tenor of his commission and the royal instructions. He has the management and chief control over the hereditary revenues and the lands of the crown, and, with the approbation of the council, makes grants of the wilderness land to settlers, according to the instructions. All monies drawn from the treasury are directed by provincial acts to be paid out only on a warrant signed by the governor.—See 41 Geo. 3, c. 18, &c. 1. Prov. L. 452.

He has a control over the guardianship of minor children by early acts of the province. He is chancellor, *ex officio*, and as such sits and judges such causes as are brought to trial in his court, and has also the custody of lunatics and idiots by his instructions.—See 2. Chalm. op. 167.

He is also vice admiral in his province. He is autho-

rized by provincial statute with the advice of the council to erect new parishes of the established church. He is also ordinary, and as such has some privileges in the appointment of the clergy to their missions. But as the powers and duties of his office are very numerous they will be better explained in the other portions of this epitome, where they will meet us at almost every step in describing the other parts of the machinery of law and government, over which, by his commission, by provincial usages and local statutes, he is directed to act as the manager and superintendant. The governor has general power of pardon except for high treason and murder, and may suspend exetion in those cases also.—1 Chalm. op. 199.

Of the Executive Council.

"The council in a colony, are to give advice to the "Governor or Commander in Chief for the time being, "when thereunto required; and they stand in the same "relation to the governor in a colony, that the privy coun- "cil does to the King in Great Britain; in some cases the "governor can act without their advice and concurrence; "and there are other cases, in which the governor is re- "quired by his instructions not to act, without the advice "and concurrence of the council, or the major part of "them. There are also instances in which a Commander "in Chief for the time being, cannot act without the ad- "vice and concurrence of the majority of the council; "although a governor in chief could, in such cases, pro- "ceed without their advice. This depends on his Ma- "jesty's instructions, which every Governor and Com- "mander in Chief should carefully attend to."

"The Council are named, in every commission of the "peace, as justices of the peace throughout the whole "Colony." Stokes on the Colonies. 239. 240.

"There are in every colony twelve ordinary members "of the council, who are appointed either by being named "in the governor's instructions or else by mandamus."—Stokes. p. 237. where also may be seen the form of the mandamus.

By the statute of 6. Ann. c. 7. s. 8. The commissions of governors are not determined *until* 6 months after the demise of the Crown.

His Majesty's Council are the privy council of the Crown in this province. We have already considered them acting as the upper house in the legislature, and we will have hereafter to elucidate the judicial and executive powers conferred on them by royal instructions, and by Provincial laws. In the exercise of these they are in some cases joined with the governor, and in others, they are directed to act separately.—At present we will endeavor to ascertain the nature of their office, as the advisers of the government.

His Majesty exercises in his privy council in England, the highest of his sovereign functions over his colonial possessions—at that board questions and complaints between different provinces have their legitimate tribunal. See 1 B. C. Christian's Ed. 231.

Appeals from the colony in all cases above £500 in value, are also heard in the last resort before this board, which is the only appeal court from the colonial tribunals, except in admiralty cases. His majesty has the assistance of his cabinet and privy councils in colonial matters of importance that require the interposition of his dignity, his authority or his liberality. It is however to the industry, the fidelity, and the talents of his provincial council in each colony that he must look for the chief instrument of giving success to his good intentions in promoting the im-

provement and prosperity of his subjects in these remote climes. Their local knowledge, their respected character, their length of years, and their influence derived from length of public service and from public esteem, are all peculiarly adapted to form a cord of union between their sovereign and the community to which they belong.

The executive council attends on the governor, whenever he directs them. They are summoned by notices sent to each member. Their offices are considered to be for life. Absence from the province without leave for a twelve-month is considered as an abandonment of the situation. The chief justice and other judges are at present excluded from administering the government in the absence of the governor, the authority devolving on the oldest member not a judge. When the treasurer has held it, he has appointed an acting treasurer, *pro tempore*; privy counsellors are bound to inquire into offences against the government, in cases where the ordinary magistrates are not sufficient. For this purpose the counsellors are inserted in the different commissions of the peace for each county, and they are consequently called justices of the peace throughout the province.

The Duties and Prerogatives of the Crown.

It is a maxim of English law, "that protection and subjection are reciprocal." (7 Rep. 5.) and this protection is to govern his people according to law. 1. B. C. p. 233.

The statute 12 and 13, W. 3. c. 2, expressly declares the laws to be the people's birthright and that the monarchs are bound to administer the government according to law, and they swear so to do in the coronation oath, enacted by 1 W. & M. st. 1 c. 6, which is in substance the same with the most ancient oaths used on these occasions. The mo-

narch also swears to execute justice with mercy. Prerogative includes all honors, pre-eminence and peculiar powers, rights and immunities, attributed to the monarch as the head of the nation and empire. As the British nation is independent, its sovereign is not subject or responsible to any earthly potentate. The constitution also has rendered his person and character inviolable. He cannot, therefore, be impeached or tried by any court for any acts whether his own or done by his command, although such command will not excuse or justify a subject for violating the rights of the nation or of individuals; and the ministers and servants of the crown, and the advisers of the sovereign, are all amenable to the law in such cases. His Majesty cannot be sued or prosecuted in any civil action.

The Governor or other person administering the government of the province, as the representative of the sovereign, partakes of the dignity and inviolability of the character of his master, on the same principle that ambassadors are privileged. There is, however, this difference, that the king holding his royal office for his own life and the lives of his descendants, can never be called into a court, or tribunal, to answer for his acts, public or private, while he retains his royal dignity. The Governor of a province on the contrary, is responsible for all his actions while exercising power, but it is to his sovereign and the tribunals of the parent country, that he is amenable; it being inconsistent with the free discharge of his duties and the dignity of the crown, that he should be made a party in the courts of the province over which he presides. The best remedy for any oppressive acts of a governor, will be found in the acknowledged right of the subject to petition the crown. If any person has, in point of property, a just demand upon the king, he must petition the crown in the court of chancery, where justice will be administered. 1, Blackst. com. p. 242.

For the greater security of the monarch, and the preservation of order and the stability of legal institutions, it has become a maxim of English law, that the king can do no wrong, which is understood to mean that he is not held responsible personally for the acts of the administration, and also that the prerogative rights of the crown are intended for the public good, and that they shall not be tortured or perverted, so as to be applied to the oppression or injury of the subject. Those maxims which say the king can do no wrong—the king can think no wrong, &c. and also, those which refuse to impute to the acts of legislation any intentions but correct ones, have originated in and are confined chiefly to the tribunals of justice. There the judges in interpreting statutes, &c. are to presume that the acts of government whether executive or legislative are grounded on public utility. If the judges were permitted to depart from this principle, then the courts of judicature, would become the censors as well as the expounders of the laws. It is therefore, to keep the judiciary, in a certain sense, subordinate to the sovereign power of the executive and legislative branches, that such rules of construction have been adopted; and although a judge may think an act of the crown or the parliament injudicious, or prejudicial to the public or to individuals, yet as long as the crown does not exceed its limited and discretionary prerogative, and the legislature does not in its acts directly contravene the laws of God and conscience, though hardships or evils may appear to ensue, the tribunals of the law must enforce obedience to the acts of the government.—The judge has no power to enquire into the propriety of an act of parliament, his office being to investigate and pronounce its meaning.

On the same principle, while the two houses of parliament exercise the right of disapproving the acts of the executive, and remonstrating against them if necessary, yet

for the preservation of decorum it is the usage in their debates to attribute any error or fault not to his Majesty but to his advisers or ministers, and thus the appearance of dissatisfaction or disrespect is avoided. For the same purpose it is the rule of parliament, that the wishes or inclinations of his Majesty on any question under discussion should never be adverted to, lest the proceedings of the legislature should appear to have been biassed, or to have been disrespectful and in opposition to his Majesty's desire.

As the guardian of the public interests, the ordinary rules which bar individuals from their rights if not claimed within a certain period do not bind the sovereign. *Nullum tempus occurrit regi*, is the maxim in these cases,—and in most cases the crown is not deprived of its claims or rights by any general enactments that bind persons in general, where it is not expressly included.

Another maxim is, that the king never dies. This means that the royal authority cannot legally be suspended, but on the death of one king, *ipso facto* devolves instantly on his legal successor who is king to all intents and purposes from that moment. The ceremonies of coronation, consecration, &c. being for his honor and elevation, but not adding to his inherited or statutory rights.

The king as head of the nation has the exclusive authority of sending ambassadors and instructing them, of treating with foreign powers, and receiving and answering their embassies. Ambassadors by the law of nations are personally inviolable, and with their suite are exempted from the civil and criminal laws of the country in which they are appointed to reside—being responsible only to the government to which they belong, for their public and private demeanor, while employed in their service.

The king alone can make treaties, leagues and alliances. It is also entrusted to him, of his sole prerogative, to declare war or make peace. Those great powers are, in practice, limited by the right which parliament has of enquiry into the conduct and expences of foreign relations, whether of a hostile or pacific kind, and of punishing the advisers and ministers of the crown, for any misconduct in these matters. It is further limited by the power the representative, or house of commons, possesses, of refusing to grant the sums of the public money or supplies, without which the operations of war must be suspended, and the negociations with foreign states interrupted and embarrassed. The consequence is, that these august prerogatives are usually acted upon with great attention to the national feelings and interest.

The crown has the command of the warlike force of the whole nation both by sea and land, for its defence, and against its enemies, and without a commission or proper authority from his Majesty, no persons can lawfully interfere on sea or land. It is as under the authority from government, that private armed vessels have been suffered to distress the commerce of foreign enemies, a system of aggression not permitted on land ; and one we may hope not likely to be again resorted to by a nation so powerful, as it is to be feared that privateers can never be conducted in the same honorable manner that has distinguished the royal navy,—their officers not possessing one tenth part of the legal authority exercised in the navy over the crews, and the nature of their pursuits being calculated to increase their avidity of gain rather than to infuse the gallant and generous feelings of warriors.

The king has authority to exclude or remove foreigners from any part of his dominions. The subjects or citizens of friendly powers are free to come and go, or sojourn

while their conduct is legal and inoffensive to the government. Those who belong to foreign states, at war with our government, are not entitled to enter his Majesty's dominions without a passport from his Majesty or one of his ambassadors abroad.

By the prov. act of 1798. stat. 38.G.3. c.1.—1.P.L. 390. Aliens are not to remain in the province without a permit from the governor, which is to be granted on proof of good behavior and security, misbehaving is subject to imprisonment, fine and banishment out of the provinces. If questioned, it lies on the Alien to prove that he held a permit. A penalty of £100 is imposed on any who shall harbor an Alien without notifying a Magistrate; masters of vessels arriving in the province to report the names &c. of all passengers to the Custom house, under £20 penalty, reports to be transmitted to the Secretary's office. The Governor may banish any Aliens on suspicion; if he returns from banishment, he is liable to capital punishment on conviction in the Supreme Court. Justices of peace are authorized to apprehend Aliens suspected, and commit them. The Supreme and Inferior courts, to try offences against the act; penalties, half to the informer and half to the use of the provincial government. This act is an annual one, and has been continued yearly down to this time. As the English alien act does not inflict capital punishment, it seems to be an unnecessary clause. Indeed the act is not brought into use, and the common law prerogative appears sufficiently extensive for all the purposes of government.

The crown has the exclusive authority to raise, enlist and regulate the national forces by sea and land; to make, repair or demolish castles, citadels and fortifications, and to regulate their government and garrisons. The fleets and armies of Great Britain are regulated according to an

annual act of parliament called the mutiny act, by which courts martial are erected, and military offences ascertained, and the authority of this act extends throughout the navy and army wherever they may be,—at home, in the colonies or on foreign stations.

At common law the king has the power of establishing ports or havens, but not of resuming their charters, of erecting beacons, buoys and light houses.—(3 Inst. 204, 4 inst. 136, 148.) and the governor and council are authorized to appoint the commissioners of light houses, three in number, by Prov. act, 1816. 56, G. 3. c. 13. 2d P. L. p. 206.

The crown is alone authorised to appoint judges. His Majesty,or the governor as his delegate, accordingly grants commissions on every vacancy in the different courts of justice in the colony, and these are all during the pleasure of the crown. In England the judges cannot be removed except on proof of wilful misconduct or positive incapacity, or inability to perform their functions. The independence of judges is desirable but difficult to accomplish, and it may be doubted whether it does not depend nearly as much on original temper and education as on the individual interest of the judge. The parliaments of Paris were always remarkable for their love of justice and freedom, although they bought their places, and were liable to be sent to the Bastille or the Chatelet at the nod of the king; and the judges of this Province do not evince on the bench any of that leaning to the executive, that might be presumed in theory to be the result of their situations.—The proclamations of the king or his governor, while in conformity to the legal powers of the crown, are valid and binding. Thus the crown may lay an embargo on shipping for a definite period in case of open war, by proclamation.—(4 Mod. 177. 179.) But a proclamation in time

of peace to delay cargoes of wheat from being exported in time of scarcity, at home was considered an infringement of the subject's, right, and particularly of 22 Car. 2. c. 13. the advisers of that proclamation obtained an act of indemnity by British stat. 7. G. 3. c. 7.

The king alone grants peerages, baronetcies, knighthood, &c. He can create new public officers when they are required, but he cannot authorize them or any other persons to demand any new fees or charges from the subject, new officers are more usually created by acts of the Province which regulate their fees or salary, and fix their duties, giving generally the power of appointing and granting the commissions to the governor, sometimes with and sometimes without the council.

The king at common law appoints corporations, fairs, markets, &c. 4 inst. 220. The king has the sole power of erecting mints, and coining money. Coining by a private person, is declared capital, as high treason, by Prov. act, 1758. 32, G. 2, c. 13, s. 1.—1. P. L. 15.

The king is also head of the episcopal English Church, in the Provinces and appoints their bishops.

Civil Prerogative.

It was considered in the case of Guernsey and Jersey, that as these islands were governed by laws of their own, subject to his Majesty's order in Council, and the subject there not amenable to the Court here, no writ of extent, from the Exchequer, nor any process from the king's bench, could be executed there. Opin. in 1737, 1 Chalmers opinions, 59. This is a ground for presuming that the same rule applies here, as the circumstances on which the opinion is founded are similar.

By an English* act of Parliament 8. G. 1. c. 12. s. 5. the cutting of white pine trees not growing in any township is for-

* It is doubted whether that act has not expired.

bidden in Nova-Scotia, and other colonies there mentioned now forming part of the United States. There are in most of the grants of land from the crown, express reservations of trees fit for masts for the navy, which, with the other terms of these grants, will be considered under the general subject of real estate.

In case of land granted in free and common socage, which is the usual tenure in this colony, it appears that the crown cannot alienc its future right to escheat for failure of the heirs of the grantee. 1 Chalmers' opinions 122.

The king under the great seal of England, may make laws that will bind places obtained by conquest, and all that shall inhabit therein, and may thus impose duties or taxes. idem. 141, 2. Grants of offices in the colonies for life appear formerly to have been held good, and they might be exercised by deputy, idem 143. The prerogative of granting monopolies of the sole right to inventions &c. does not exist in the Colonies. 1 Chalmers' op. 202, 3. See also 21, Jac. 1. c. 3.

The King's Prerogative.

ECCLESIASTICAL.

The king cannot restrain synods of any church from meeting, provided they do not usurp any unlawful authority. 1 Chalmers' opinions. 14. His prerogative in ecclesiastical matters is not controlled except by express words. idem 18. When parishioners are by act entitled to present a clergyman, the Governor is bound to induct, but when for six months they neglect to present, there the Governor as ordinary may collate a clerk to such church, by lapse, and the collatee shall hold the church for life, idem. 23.

It was the opinion of Sir Edward Northey, in 1707, "That when a man dies intestate in the plantations, hav-

" ing a personal estate there, and also any personal estate " or debts owing here in England, the right of granting ad- " ministration belongs to the Archbishop of Canterbury; " and if administration be granted in the plantations also, " (which may be) that administrator will be accountable " to the administrator, in England, but will be allowed the " payment of just debts, if paid in the order the law al- " lows of," &c.—" I am also of opinion, that when the " letters of administration arrive at the plantations, under " the seal of the prerogative court of Canterbury, they are " to be allowed there, and the authority of the administra- " tion, granted in the plantations, from that time ceases."

Principles of Colonial Government stated in Campbell v. *Hall, Cowper*, 204.

1st. A country conquered by the British arms, becomes a dominion of the king in right of his crown; and therefore necessarily subject to the legislature, the parliament of Great Britain.

The 2d is, that the conquered inhabitants once received under the king's protection, become subjects, and are to be universally considered in that light, not as enemies or aliens.

The 3d. That the articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning.

The 4th. That the law and legislative government of every dominion, equally affects all persons and all property within the limits thereof, and it is the rule of decision for all questions which arise there.—Whoever purchases, lives, or sues there, puts himself under the law of the place; an Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives.

The 5th. That the laws of a conquered country continue in force, until they are altered by the conqueror.

The 6th and last proposition is, that if the king (and when I say the king I always mean the king without the concurrence of parliament) has a power to alter the old and introduce new laws in a conquered country, this legislation being subordinate, that is subordinate to his own authority in parliament, he cannot make any new change contrary to fundamental principles.

"No question was ever started before, but that the king has a right to a legislative authority over a conquered country; it was never denied in Westminster Hall, it never was questioned in parliament" Coke's report of the arguments, and resolutions of the Judges in Calvin's case, lays it down as clear. 7. Rep. 17. 6.

Lord Mansfield decides that by the establishment of an assembly, the king *irrecoverably* grants a constitution of the representative kind, to the inhabitants of a colony,—An action for false imprisonment lies against a governor in England, Mostyn v. Fabrigas. Cowper. 172.

BOOK I.—CHAPTER IV.

THE REVENUE.

The revenue of the Province may be divided into that part which is appropriated by the Provincial Legislature, and that which is disposed of by the Crown without the interposition of any other authority. The latter will be described in a subsequent chapter. The former consist of all duties of excise, customs, or other taxes imposed by acts of the Provincial legislature, to which are added the net proceeds of all duties on commercial transactions imposed by any acts of the imperial parliament, since the passing of the celebrated statute of 1778. 18, Geo. 3. c. 12. By that act, the parliament of the mother country relinquished the claim and exercise of any future right of taxation in the colonies, except the imposition of such taxes as should be necessary for the regulation of commerce; and in that case the net proceeds to be paid into the treasury of each province and disposed of by its own legislature. Duties levied under English acts of a prior date, are not under the control of the Provincial treasury. Recent acts of the Imperial Parliament having authorised the colonies to

trade with foreign countries, have also imposed a variety of duties on importation and exportation. The officers of the customs in the colony form an establishment in connection with the board of Customs in England, and are directed in their proceedings by English statutes. The board of Customs having directed their collectors in the Provinces, to retain certain large sums to pay their salaries, the colonies remonstrated, and Nova-Scotia has passed an act which has been assented to, and ratified by his Majesty, and will prevent further question as to the expences of collection to be retained. The imperial acts regarding the customs and navigation in general, will be described under a subsequent head.

For the convenience of trade, any goods on the importation of which duties are chargeable, may be warehoused in appointed places, and no duty is required to be paid until they are withdrawn for home consumption, and they may remain a year in the public stores. If exported and entitled to drawback, the bonds which have been given for duty are cancelled, and the duty not exacted. The Imperial acts also allow warehousing in the same manner.

The duties levied under provincial acts are collected by the collectors of impost and excise at the different ports of the province, on various goods imported and exported, and the net revenue accounted for and paid over to the Treasurer of the Province.* To facilitate the collection of the Revenue and the arrangement and liquidation of the public accounts, the Governor is authorized (by Prov. act of 41st, Geo. 3. v. 1, p. 454. 1801. c. 18. sec. 19.—Continued to the present by several acts, see 1, Wm. 4, c. 3. s. 28.) to appoint five commissioners of revenue, who are to serve gratuitously and to take an oath to perform the duties of

* A table of duties will be found in the appendix, and also a list of exemptions and prohibitions.

their office. They are to judge of the claims made for drawback on articles exported, which have been previously imported and paid duty. By the same clause all public accountants are directed to account quarterly to the treasurer, in such forms as he shall prescribe. These accounts he is to report from time to time to the commissioners of the revenue, and the treasurer is also directed to produce in every session of the general assembly to the committee of public accounts, a report and general statement of the public accounts of the Province. This committee of public accounts is a joint committee composed of several members of the council and assembly.

The governor appoints the collectors of impost and excise, and the waiters and guagers at the out ports. The collector at Halifax is to give bonds with two sureties in £5000, the collectors at outports in £1000. The collector at Halifax is allowed to receive 3 1-2 per cent on the sums he collects, up to £700, which is fixed by law as the *maximum* of his salary. The collectors at outports receive 10 per cent on the net revenue they respectively pay in to the treasury, and on some duties 2 1-2 per cent only, and the waiter or guager receives 5 per cent on the same amount. The waiter at Halifax has a salary voted annually in the appropriation act, and certain perquisites.—33, G. 3. c. 1. s. 9. 1793. 47, G. 3. c. 16, 1806. 57, G. 3. c. 20, 1817. 10. G. 4. c. 3. s. 10. 11. 1829. P. L. v. 1. p. 313. V. 2. p. 11. v. 3. p. 17, 247 & 273. 1, W. 4. c. 2. s. 33. 1830.

Light Duties.

A small duty of 4d. per ton is also collected from every trading vessel entering the waters of the province, under the name of Light Duty, which is carried into the provincial Treasury, and applied to the maintenance of light houses on the coast, for the protection of shipping. The

governor appoints the Collectors ; act 1793.33 G. 3. c. 16. 1. P.L. 327. The governor and council appoint 3 commissioners, who have the charge and superintendance of light houses, and purchase every thing necessary for their use and repair. The commissioners appoint and remove the keepers, and make rules for their regulation ; they are bound at any time on request of the governor, to make him a correct report of their keepers and state of repair, &c. and lists of stores, &c. The governor is authorized to draw by warrants from the provincial Treasury whatever sums are required for the maintenance of these establishments. The Commissioners are allowed 5 per cent on the sums expended, and they must account to the Treasurer as auditor of public accounts to be by him transmitted to the committee of public accounts. Prov. act. 1816. 56, Geo. 3. c. 13.—2d vol. P. L. 206.

The collector of light duties at Halifax, is allowed 7 1-2 per cent by act of 1827. 8, G. 4. c. 1. s. 10. on the amount he collects. The licence duties will be pointed out in another place.

Duties of Impost and Excise.

The earliest act now in force respecting provincial duties is that of 1792, 32, G. 3. c. 13. 1, P. L. 298. This act imposed a duty of 2 1-2 per cent on all goods imported, to be computed on the sterling first cost and this was raised to 3 3-4 per cent by the act of 1826. 7, G. 4. c. 37. 3. P. L. 271. By the first mentioned act, merchants not resident for 6 months previous, were to pay 5 per cent on their importation.

The act of 1792, sec. 2. directs the importer to produce at the Excise-office, the original invoice of the goods, and he, or his agent, or clerk, in his absence, must make oath to its correctness and as to his residence.

Non-compliance in these respects produces a forfeiture of the goods.

The 7th section gives directions as to certain enumerated articles of clothing and provisions, when imported by a commissary or contractor, employed by his Majesty's government for the use of the army or navy, in which case, on compliance with certain regulations, the duty is remitted.

The 8th section allows persons coming from abroad to settle in this province, to bring with them household goods, provisions, &c. free of duty, provided they enter them duly at the Excise office, and do not make sale of them in the way of trade.

The 9th section allows the duty to be returned as drawback, on the goods being re-exported. They must be re-shipped between sun-rise and sun-set, and before put on board, the original invoices must be exhibited at the Excise, and certain oaths taken by the re-shipper and by the master of the vessel, into which they are about to be put. If the proof of the goods being landed abroad, be duly returned, and application made within 12 months after they are re-shipped, the drawback will then be allowed by the commissioners of the revenue* on whose order a warrant is granted by the governor on the Treasury for the amount. This drawback is not allowed unless the re-shipped goods amount to £50 in value, and in cases of hardship where the commissioners have not felt authorized to grant drawbacks, the course has been to petition the Assembly for them.

The severest penalties are established against the fraud of re-landing goods, which have been re-shipped for drawback, and the oaths of the owner and master are pledged against the practice. If notwithstanding this moral guard, the attempt is made, both the goods and the vessel become forfeited, and all accomplices in landing or receiving them, are liable to pay £100 each for every such offence.

* They are substituted for the collector by act 1822, 3. G. 4. c. 24. 3. P. L. 129.

The act of 1826, 7, G. 4. c. 37. 3. P. L. 271. sec. 3. creates many exemptions from this Excise ; the 6th sec. authorizes the warehousing of dutiable goods, by which the merchants has credit for the duties without further tronble, till he can sell the goods. The 7th directs differences between the Excise collectors and the merchant, to be arbitrated by three merchants of their mutual nomination, the collector retaining the goods until the dispute is adjusted. The 8th privileges shipmaster from any disclosures of the contents of packages further than those required at the Custom house, and the 9th section compels shop keepers having £5 worth of dutiable goods, or more in their possession to produce a certificate that they have paid duty, on demand of the Excise officers, under penalty from £5 to £50.

The Provincial act of 1830. 1. W. 4. c. 2. passed to impose duties on wine, rum, brandy, gin, and other spirits, and brown sugar, imported, and on spirits manufactured in the province, in its 3d section directs a list of the articles imported with their marks and all other particulars usual, to be produced and reported (in 24 hours after the ship's arrival) at the Excise office, and the importer or consignee as well as the importer or consignee, as well as the master and supercargo, must verify the same as a true description of the whole cargo brought to the province by their oaths. The vessel must not break bulk till a permit from the collector of excise for that purpose is obtained, nor can any dutiable articles be lawfully removed from her until permits are obtained for them. The West India produce, wines, &c. must all be guaged or weighed by the proper officers, and in case bulk is broken or goods landed before all, these particulars are complied with, and the necessary permission obtained in writing in due form, the vessel is forfeited and each party concerned in the offence, incurs £100 penalty for every violation of the law.

The 4th section directs the mode of guaging and weighing the articles, and directs security to be taken for duty, if it is above £10. Sec. 5. authorizes warehousing.

The 6th section compels distillers to make weekly on oath a return of the spirits &c. manufactured by them.

The 7th section authorizes the excise collectors, to sell by auction, goods, for which the duty has not been paid after a certain number of days.

The 8th and 9th sections forbid the removal of dutiable goods of above £5 value from one merchant's store to another, without a permit from the excise, and imposes forfeiture of the goods, of the trucks, carts or other vehicles in which they are transported and £50 penalty, on such illegal removal.

The 10th section orders such goods to be guaged and weighed again, when about to be reshipped for drawback, and establishes the *minimum* or smallest quantity to entitle them them to this advantage. By sec. 10, the drawback is allowed on 100 gals. or more of wines or spirits of any kind exported, and on 1000 lb. brown sugar. It also prescribes the oaths to be taken by the exporter, and the master of the vessel in which they are to be reshipped. The act goes on to make a great number of other regulations concerning the drawback.* It adds to the list of exemption, certain articles for the use of the army and navy, &c. and permits goods to be re-exported under certain regulations without having been landed or paying duties. It gives the excise officers large powers of searching vessels, boats stores, &c. and authorizes them on obtaining a justice's warrant where there is ground for suspicion to search dwellings &c. in the day time, sec. 26. 38. It adds a penalty of £100 for obstructing those officers in any lawful search. The act of 1822, 3, G. 4. c. 24, 3, P. L. 129. imposes penalty from £10 to £100, besides the value of the duties on goods

* Liquors must be exported in the original casks &c. to obtain the drawback, by sec. 10. 12.

smuggled from neighboring colonies. It also directs the collectors to take warrants of attorney to confess judgment along with the bonds of duties; and orders that parties who have been sued for their own duties are not to be afterwards accepted as sureties on such bonds. The 10. G. 4. c. 3, 1829, imposes duties on foreign goods, and makes several regulations about warehousing goods. These are the principal regulations of the provincial revenue laws, which are very complicated and difficult to comprehend. They are annual acts, and are at present continued by the 13. 14. 21 & 22. chapters of act 1. Wm. 4. 1830. For alterations by act 1832. See appendix.

The Crown Revenue.

Under this title are comprised such revenues arising in the Province as are disposed of by the Executive without the interference of the representative or house of assembly.

1. *The Crown Lands.* The only lands in an improved state, the property of the crown in Nova-Scotia, are the buildings and grounds reserved and occupied for military purposes, and therefore unproductive of revenue. The buildings and grounds provided for public purposes by the colonial legislature, at the expence of the colony, out of the funds disposed of by the assembly, are specifically appropriated to their respective uses by provincial enactment, and are of course no source of revenue of any kind, being the dwelling of the governor, court houses &c. Until very lately the crown used to grant to settlers such tracts of land as they required without purchase, under certain regulations. The grants varied from 200 to 500 acres to an individual, in proportion to his family and means of improving the soil. The grantee received it on certain conditions which were to be complied with on pain of forfeiting the land. These chiefly related to making certain improvements within a given time, and the

payment of a quit rent reserved in most of these grants. At present a new system has been adopted, by which lands are to be *sold;* in practice it will make little difference, as the heavy fees to public officers on the grants constituted a price almost equal to the value of wilderness land. This method will be likely to produce very little revenue if it ever pays the necessary expences of carrying it into effect, as much more land has already become private property, than will be required for cultivation for very many years, and it can be often obtained for less than the expences paid on the survey and grant. In the appendix are copies of the instructions published on the subject.

2. *Quit Rents.* These were originally exacted from grantees of land, but were discontinued early in the time of the troubles which produced the American revolution. They were demanded from the province in 1812, and on remonstrance of the assembly suffered to lapse into oblivion, but the claim was revived in 1828, and a receiver appointed. No collection has been made since the year 1772, and the house having again addressed the king, they appear to be tacitly abandoned.

The quit rents are particularly and specifically pointed out in the grants and where they are not so reserved by the grant, the land will not be subject to any quit rent. In some instances the lands are held without a formal grant as in Halifax, where all the town lots were entered into a Register Book, by letters and numbers according to the plan of the town. There the quit rents were not reserved. Some lands were given also by licences of occupation in the early settlements and have been held for many generations without any formal charter.

The immense expence that must necessarily attend the collection, would render these rents of no avail as revenue, if attempted to be enforced. Their gross amount would be not above £4000 annually, and the salaries with law

and other expences incidental to collecting, would nearly if not entirely absorb that sum in every year.

3. *Wrecked property* or any vessels or goods found on the seas or shores of the province became the property of the Crown, where no owner can be found for them within a year and a day at common law, but see 1. P. L. 448.

4. *Mines.* The grants from the Crown usually contain a reservation of all mines and minerals, and the government in consequence is proprietor of most of the mines of value which have been discovered in the Province. They are chiefly of iron and coal. The latter are some of the most valuable mines of coal in the world, particularly those near Sydney, Cape Breton. The coal at Pictou and other places is very good, but not equal in quality to the Sydney. The Sydney mines are farmed for terms of years by private persons, and the rent which is considerable, is disposed of in salaries to the officers of the Provincial government, pensions, &c. The other mines at Pictou are rented but the benefit has been granted away by government for a long term of years.

5. *Duties* levied at the Custom house under imperial acts passed *prior to* 1778, and remaining *unrepealed.* These duties in Nova-Scotia amount to about £3000 per annum, and will probably be repealed whenever the civil list is paid entirely by the province.

6. There are several casual sources of revenue which are of no great value but as they form a part of the laws cannot well be omitted here. Such are *treasures* found hidden or concealed, without any known owner, and they belong to the king. Concealing their discovery is a misdemeanor punishable by fine and imprisonment. 3, inst. 133. *Waifs*, i. e. goods stolen and thrown away by a thief in his flight from justice. *Estrays* or valuable cattle straying abroad without any known owner. Which last after proclamation and the expiring of a year and a day, become the property of the crown. *Fines*, imposed by law, on crimes

and offences, and not specifically appropriated. *Forfeitures* of lands or goods for offences. Deodands or any articles which prove the immediate instruments of death to any human being, are forfeited to be applied to religious or charitable uses. *Escheats* of lands for failure of heirs, or neglect of the owners to fulfil the terms on which it was granted originally by the crown. *Whales* and other royal fish are said to belong to the crown in the colonies as in England. 1 Chalm. opin. 131. *Sed quære.*

The custody of Idiots. An idiot is one by nature so deficient in understanding as to be totally incapable of managing his own interests. The custody of his person and property devolves by law on the king whose duty as *pater patriæ* or father of his country is to prevent the idiot from injuring his person or estate or doing any thing to the prejudice of his heirs or others interested in the reversion of his lands (F. N. B. 232.) In such cases the king is to take the profits of the lands without wasting or injuring them, and after the death of the idiot, to restore the estate to the heirs, in order to prevent alienation. Stat. 17, Edw. 2. st. 2. c. 9. 4, Rep. 126. 1 Blackst. com. c. 8. p. 303, House of Lords, 14th Feb. 1720. 3, P. Wms. 108. At common law there lies a writ *de idiota inquirendo.* (Fitz. Nat. Br.) to inquire whether a man be an idiot or not. This is tried by a jury or inquest of twelve men ; and if their verdict establish his idiocy, the custody belongs to the king who may grant it to any one. F. N. B. 233. Co. Lit. 42. *The custody of Lunatics* belongs also to the crown, but is not a source of revenue, as the crown is accountable as a trustee for the profits of their estates.

By Provincial statute of 1774. 14 & 15 G. 3. c. 5. sec. 7. vol. 1. P. L. p. 187. where persons are furiously mad, and dangerous to be permitted to go abroad, two justices by warrant to the constables, churchwardens and over-

seers of the poor of the place, are to cause him to be apprehended and secured as required by locks or chains. If he does not belong to the place, he is to be sent on to his legal settlement, where two justices are to authorize his confinement. The restraint is only to continue while the madness does. Two justices are authorised to order the churchwardens or overseers of the poor to sell and seize his goods, or receive rents of his land to an amount sufficient to defray the expences of the mad person, proved on oath before them to have been actually incurred in enforcing this law, and to account to the sessions. If the mad person has no estate sufficient beyond what his family require for maintenance, then his expenses are to be paid by the township or place to which he belongs, by order of two justices directed to the Churchwardens or overseers. This act contains a saving of the prerogative rights of the crown over Lunatics and their property, and a proviso that it is not to hinder the friends or relatives from taking charge of such unhappy persons.

The power vested in England in the Lord Chancellor, as to the custody and care of idiots and lunatics is given in the Colonies to the Governor. See the Instructions on the subject passed in the year 1772, in 2. Chalmers op. 167.

Lunatics are persons whose intellects have become so impaired by mental or bodily disease or accident, as to render them unfit to manage their own affairs, yet still having lucid intervals, when reason for a time returns. Others who are frenzied or have totally lost all understanding by disease, who have become deaf, dumb and blind, not having being so at birth, and such as are deemed to a deficient in understanding to manage their affairs, although having some glimmering of an understanding, are all included under the general term of *non compos mentis*

which also comprizes lunatics and idiots, but is more frequently used to signify persons accidentally deranged.—The king is guardian by law to all these descriptions of unfortunate beings, to prevent the unworthy from taking unfair advantage of their mental aberrations and weakness also to hinder them from committing mischief.

The crown accounts to all these (except idiots born) for the profits of their estate, when they recover their senses, or to their legal heirs or representatives, after their death: and by stat. 17 Edw. 2. c. 10. the king is to provide for their custody and support. 1. B. C. 304.

Upon petition to the Chancellor, who is the kings delegate in this respect a commission is issued to inquire into the party's state of mind—and if he be found *non compos* he is usually committed by that judge to the care of some friend, relative or other person, (called his committee) and a suitable allowance is made for his maintenance. Paupers deranged in mind are in this province, placed under the management of the overseers of the Poor, for the township. The Committee should not be any person who would benefit by the death of the insane party. 2. P. W. 638.

By the laws of ancient Rome, a prodigal was subjected to the same curatorship as an idiot or lunatic, and it is a pity that at least those who add habitual intoxication to prodigality, should not be restrained from consummating the ruin of themselves and their connections.

7. *The Post office* is a source of revenue to the crown, derived under different British statutes, which extend to the colonies. These acts give the government the exclusive privilege of carrying letters and impose penalties on any person who shall carry a letter for pay. The assembly annually grants about £1000 to aid the post office department, in establishing posts in different parts of the

Province. The whole amount of the different branches of revenue, received by the crown, and not subjected to the control of the assembly, may be £9 or 10,000 which is about the same with the grant made by the British Parliament for the civil establishment of the colony, so that as far as regards civil government, this province is not burthensome to Great Britain, who receives with one hand as much as she pays with the other. The military establishment and the naval, are on the contrary heavily expensive being perhaps £150,000 per annum, and not counterbalanced by any revenues. The commercial and territorial advantages arising to the crown are the only benefits to be poised against this heavy expenditure.

Recovery of Crown Debts.

The Prov. act of 1778, 18. G. 3. c. 3. 1 P. L. 209, 210, directs "that the Collectors of the public money, in any "case where they are obliged to give credit according to "the laws of the Province, shall take such recognisances "in the name of our sovereign lord the king, to be paid "to our said sovereign lord the king, his heirs and succes-"sors, and to his and their use only:" it likewise directs, that a warrant of attorney to confess judgment, should be taken at the same time annexed or endorsed on the recognizance. If the amount be duly paid at the time appointed, the collector may discharge the recognizance, "and the same shall become void."

Sec. 2. directs that when such recognizances are not paid when due, the collector is to "transmit them to the "treasurer of the Province by the first safe conveyance."

Sec. 3. Directs "that the treasurer, upon receipt there-"of shall cause the same to be prosecuted in *H. M. Su-"preme Court at Halifax*, and the recognizance being duly "filed, and the confession of the debt being acknowledged "no imparlance shall be granted, but judgment shall be

" made up thereupon, and execution shall issue to levy the " debt upon the goods, chattels and estate of the debtor." The action " may be entered"—at any time in term, or if in vacation before the chief justice, or in his absence, any other judge of the supreme court, " who shall thereupon " order judgment to be made up as of the last term, and " execution to issue thereon."

Sec. 4, requires the Sheriff to levy or make return within 60 days, after the date of such execution.

Trespasses on Crown Lands.

The Provincial act of 1767, 7, G. 3. c. 1. 1 P. L. 125, imposes a fine of £50, on persons occupying by themselves or others, any crown lands, without licence in writing, first obtained for the purpose from the Governor, to be prosecuted by bill, plaint or information in any court of record, and convicted on the oath of one credible witness.

BOOK I.—CHAPTER V.

SUBORDINATE MAGISTRATES.

MAGISTRATES OF COUNTIES.

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1. *Sheriffs.* In each county of the province, a sheriff is annually appointed whose office is entirely ministerial, although the same officer in England has also judicia functions. By the stat. 8. Eliz. c. 16. each county is to have a distinct sheriff, it having been a practice before that, for one person to be sheriff of two counties in many instances.

As keeper of the peace in the county, he may apprehend and commit to prison, all persons who break the peace, and may compel persons attempting to break the peace to enter into recognizance or security to keep it inviolate. It is his duty to pursue and arrest all criminals, and commit them to gaol for safe custody. He is to defend the county from the public enemy, in case his county be hostilely invaded. In order to furnish him with the means of enforcing his authority, he has power whenever the peace of the county is disturbed, or felons are to be apprehended for crimes of magnitude, to command the attendance and assistance of all or any of the inhabitants of his

county, above the age of fifteen years, who are bound to obey under pain of fine and imprisonment (Stat. 2. Hen. 5. c. 8.) This force is called the *posse comitatus*, or power of the county. Although it can seldom, if ever, be necessary for a sheriff to command the rising *en masse* of the people to his aid, yet it is the legal duty of every person to render cordial assistance to the sheriff, in the cases above enumerated, for the preservation of the peace, and in order to give a due weight and respectability to the lawful authorities of the county, and repress disobedient spirits. The sheriff though thus a general conservator the peace in his precinct, is not to act as an ordinary justice of the peace, (Stat. 1. Mar. st. 2. c. 8.) as these functions are only given him to add weight and dignity to his station as a chief minister of the laws, and his general care of the county must not divert him from the other and more appropriate duties of his office.

The sheriff's peculiar duty is to execute the orders of the Courts of Justice, and the writs issued out of these courts in the name of the Sovereign. In civil causes he serves the writ on the party defendant he arrests for debt and takes bail for the appearance of the debtor, he attaches the property of absent or absconding debtors. He summons and returns the juries to try all causes in the courts of law ; he executes the judgment of the courts, by the detention of parties, the sale of property, the dividing of lands or whatever else may be the decision.

In criminal cases he has charge of all prisoners, and is bound to execute the sentence of the law pronounced by the judges.

He is bound to attend all the courts of a higher order, to preserve the tribunals from annoyance or insult, and for this purpose has a direct authority over the constables appointed to attend. He has also to attend to return all

writs to the courts from whence they are directed to him; he attends the justices of the peace in their Quarter Sessions: we have already described his power and duty in the holding elections of members; besides this he attends at all public meetings of the inhabitants, which it is the English usage for the sheriff to call together when required by a reasonable number of respectable freeholders—not that such a requisition or his presence are legally essential, but they help to ensure order and regularity of proceedings. The sheriff of Halifax, attends the ceremonial of opening and closing the session of the Legislature, with peace officers to keep order. It is the further duty of the sheriff to seize to the king's use all lands devolving to the crown by *Escheat* or otherwise, to levy all *fines* and *forfeitures*, and to seize and keep all *Waifs*, *Wrecks* and *Estrays*.

He is also charged with the care of the gaol, and is made responsible for the safe keeping of prisoners for crime or for debts. He has the appointment of the gaoler. He also may appoint deputies, as his duties are too numerous to execute them all in person. For the conduct of his deputies he is civilly, though not criminally responsible; those deputies are either general or special. The general deputy is authorized to execute any writs or orders that he receives for his principal. The special deputy is nominated for some particular service, and usually is appointed at the request and risk of a private plaintiff in some civil suit. Some of the counties of the province are so large that they have been divided into districts. The sheriff acting in the district of his residence and a deputy in each other district exercising all or nearly all his functions.

There are some acts in which the sheriff must be personally present, such as the execution of a writ of partition; but generally his duties can be legally performed by deputation. The escape of a prisoner makes the sheriff

responsible in a criminal matter to the king, in a civil, to the injured party; for this reason he must own lands in the county sufficient to meet such responsibility. (2, Edw. 2. stat. 2. &c.)

The appointment of sheriffs is regulated by acts of the Province as follows: Prov. Laws, v. 1, p. 344, statute of 35, Geo. 3. c. 1, anno, 1795. The chief justice of the supreme court, (or in his absence the senior judge of that court,) yearly on the last day of Michaelmas term, nominates for each county three persons. He presents a list of their names to the Governor, who marks one of the the three for sheriff in each county for the ensuing year. The person so designated, must reside in his county, and must enter security and take out his commission, which invests him with the office of high sheriff. Once regularly appointed he continues in office till another regular appointment of sheriff for the county takes place, because the vacancy of such an office would suspend the execution of all process, and be productive of much inconvenience. If the person designated refuse to serve he is made liable to a fine of £50, and the governor may mark one of the two remaining names on the list instead.

If the sheriff signify his consent to serve again in writing to the Chief justice or senior judge, he is to be returned as one of the three candidates for the office in the ensuing year, unless the majority of the Justices of peace for the county assembled in general sessions, send a representation to the supreme court at Halifax, praying that he should not be returned in the list of candidates, in which case his name must be omitted. Before entering upon the duties of his office, he is to take and subscribe an oath prescribed by the act of 1795 which particularizes most of his duties.

In case of the death of a sheriff in office his deputy is

authorized to continue to execute the duties in the name of the deceased until another sheriff shall be appointed and sworn, and the sureties of the deceased sheriff continue liable for the acts of the deputy, as if his principal had been still living. If he dies leaving no deputy; any two judges of the inferior court of the county, of whom the senior judge of that court then within the county, shall be one, must immediately appoint a temporary sheriff who is to take the oath and to give security to the satisfaction of the two justices, and he is to act until a sheriff shall be appointed and sworn in the manner first described.

By the prov. statute, 10, Geo. 4. c. 33. 1829. Every sheriff is annually within two calendar months from the date of the Gazette in which his appointment is published, to deposit at the secretary's office in Halifax, a bond for the due performance of his office, made to his Majesty, his heirs and successors, in the usual form, with two sureties freeholders, himself in £1000, and each surety in £500. Within twenty days the Governor and Council are to notify the sheriff in writing of their approving or disapproving the sureties. Within three calendar months from the date of Gazette, the Governor is to remove every sheriff who has not given approved security. On approval of the bond he is to be entitled to receive his commission and to execute the office, but until approval the sheriff of the prior year continues and his last sureties remain bound, whether he be the same or another person. Where the sheriff acts wrong or his sureties become doubtful, it is the discretion of the governor to grant a commission to a new sheriff on his first appointment, who has three calendar months from the date of such commission to find approved security, but who enters into office immediately on being appointed. The sureties are responsible for his conduct from the date of his appointment, until another sheriff shall be actually commissioned, or if he is appointed again,

until he gives a new bond with approved sureties. If sureties wish at any time to be released from further responsibility, the governor will compel the sheriff to substitute others within three calendar months, and if he fail to do so, he is to be removed. Persons injured by the act or omission of a sheriff having first obtained judgment against the sheriff, may sue the responsible parties under the bond in his Majesty's name, and shall be entitled to the proceeds of such suit. No action is to be brought against a sheriff for any act or omission, except within three years after the neglect complained of.

By the act of 1795, before quoted, any sheriff or deputy sheriff who improperly detains the money of suitors, is liable to pay the parties 5s. in the pound beyond their money, for every weeks detention after payment is demanded, to be recovered in the Supreme Court, in an action which must be commenced within three months after such demand.

By act of 1793. 33, G. 3. c. 10. 1, P. L. 321. sheriffs are authorized to administer an oath to appraisers of lands or goods attached by them, or taken under an execution.

By the tenor of his oath, the sheriff is prohibited from taking any fee, favor or reward, for making his deputies.

By stat. 1, Henry 5. c. 4. no sheriff's officer is permitted to practice as an attorney while in office.

Rules have been established by the Supreme Court at Halifax, by which the jailor there is to be governed; hours appointed for prisoners to be visited by their friends, and restrictions placed on the sale of spirituous liquors in the prison.

By Prov. act of 1801. 41, G. 3. c. 14. vol. 1. P. L. p. 446. made perpetual by 1, G. 4. c. 19. 1820, 3, P. L. the sheriff as well as the coroner, officers of customs, im-

post and excise, and justices of peace, on receiving notice of a wreck, or wrecked or derelict goods found afloat, are to attend and secure the property from loss and depredation. Authority is given to the majority of such of the above classes of officers as attend, to decide in case of difference of opinion as to the best measures to be taken. —They are empowered to demand assistance of all persons in the neighborhood, who are to obey under severe penalties, and this extends to the officers and men of vessels anchored near the place. For which aid they are allowed salvage.

2. *Coroners.* Those are officers in each county or district, whose chief duty consists in a judicial enquiry into the causes of all sudden and violent deaths, to prevent the concealment of homicide. Their proceedings as regulated by statute 4, Edw. 1 *de officio coronatoris* consist, in enquiring, when any person is slain or dies suddenly, or in prison, into the circumstances of his death. They must proceed *super visum corporis*, that is on inspection of the corpse, for if that be not forthcoming, they cannot hold a regular inquest (4, Inst. 271.) It must be held at the place where the death occurred by a jury obtained from the vicinity, over whose investigation the coroner is to preside. If the verdict charge any with homicide, the coroner is to commit the accused to prison for further research. He is also to enquire what lands or goods are forfeited, and if any articles have become deodand as the instruments of death. The evidence and verdict under his own seal, and the seals of all the jurors, he must certify and return to the Supreme Court, before its next sitting. He is authorized by the act to summon a jury by verbal notice, or by warrant to a constable, and to hold his inquest on Sundays if necessary. Another branch of his duty is to enquire into wrecks, and certify whether wreck or not, and who is possessed of the goods. He is, as we mentioned in

treating of the sheriffs duty, one of the officers empowered to act (separately if only one be present, or in conjunction) in taking charge of wrecked vessels and goods found afloat. He is also to enquire into the finding of hidden treasures. —Where the sheriff is a plaintiff or defendant in a suit, the coroner executes the process, and the same course is regular, if just exception be taken and allowed to the sheriff for suspicion of interest or partiality, as where he may gain or lose by the judgment, or is of kin to either party. (4. Inst. 271.)

Coroners were at common law elective officers, as were also sheriffs—but in this province the governor appoints and commissions coroners, who hold their offices not annually like sheriffs, but until the crown or governor thinks proper to remove them.

3. *Justices of the Peace.* The office of conservator of the peace was originally elective in England. Besides those elected by the people, there were certain public officers who were *ex-officio* keepers of the peace, and while the right of electing conservators has become obsolete, yet the power and duty of acting in that capacity, has continued to be annexed to those offices. The royal office itself includes the general preservation of the peace of the kingdom, and it is therefore in the language of law-forms called the king's peace. The governor as the representative of his Majesty, must be regarded as clothed with this branch of the king's authority within his province. The Chancellor, the Treasurer, the Master of the Rolls and every other Judge in his own court,—*ex-officio* or by prescription, are keepers of the peace, and may commit those who break the peace or bind them in recognizances to keep it. The members of the Council are included by name in all commissions of the peace; the sheriff within his county, the coroner in his district, have similar authority—constables are also conservators of the peace within

the bounds of the settlement, or place for which they are appointed, and may apprehend breakers of the peace, and commit them until they find security for their keeping it in future.

Justices of the peace appointed by the crown were first established by the statutes 1, Edw. 3. c. 16. 4. Edw. 3. c. 2. 18, Edw. 3. st. 2. c. 2. 34, Edw. 3. c. 1.

They are appointed by the governor in a special commission under the great seal, and thereby authorized to enquire into and determine felonies, and other misdemeanors within their county. Formerly their number was limited, but many statutes having imposed a great variety of public duties on them, it was found necessary to appoint a great number to meet the exigencies of the public. Many of the older statutes direct, that they should be of the best reputation and most worthy men in the county.—The statute 13 Rich. 2. c. 7. orders them to be of the most sufficient Knights, Esquires and Gentlemen of the law.

By statute 2. Henry 5. st. 1. c. 4. & st. 2. c. 1. they must be resident in their several counties, and by statute 18. Henry 6. c. 11. no justice is to be put in commission if he has not lands to the value of £20 per annum.—This sum was raised to £100 per annum, by an act of G. 2. which is not in force in the colonies.

This office is held during the pleasure of the crown, and every justice must take the usual oaths to the government before he can act. His office may be determined—1. By the demise of the king.—2. By express writ under the great seal discharging him.—3. By writ of supersedeas.—4. By the issuing of a new commission in which his name is omitted.—5. By his being regularly appointed to be sheriff of the same county.

The commission empowers each justice singly to preserve the peace, and gives him all the power of the ancient conservators at common law, in suppressing riots and affrays, taking securities for the peace, and apprehending and committing persons accused of crimes. It empowers any two or more justices to hear and determine all felonies and otner offences, on which is grounded their authority at the General Quarter Sessions of the peace, which cannot be held by a single justice. Where any statute requires two justices to concur in doing any act, it is generally the rule that they should meet together in order to make their order or other act regular. See 3, T. R. 380, 4, T. R. 596.

To protect justices of the peace from being brought to too rigorous and captious an enquiry as to the legal correctness of their gratuitous exertions, in carrying into effect the multifarious enactments of the civil and criminal law, of which they are appointed to enforce, it is provided by an act of the province of 1814. 54, G. 3. c. 15. 2, P.L. 121. 123 that in any action brought against a justice of the peace, for any thing done by virtue of his office, the action must be laid in the county or district where the fact complained of was committed, and the justice may plead the general issue, and give the special matter in evidence. He is to have a calendar month's notice of the intended action in writing, signed by the prosecutor or his attorney, with the place of abode, and may tender amends, which if refused, may serve him in case a jury afterwards think the amount was adequate, to throw the expences of the cause upon the prosecutor. He may, after action commenced, pay into court the amends with the costs then incurred, which will have the same effect as to subsequent costs.

Constables and others acting under a warrant signed and sealed by a justice of the peace, are also protected from suit, provided they furnish a copy of it within 6 days

after it is regularly demanded. Justices of the peace endorsing warrants against criminals are relieved from any responsibility, and any action against a justice of peace or the constables or others aiding him, for acts of an official kind, must be commenced within six calendar months after the act complained of shall have been committed.

By act of 1829, 10 G. 4, c. 44. In all actions against any Commissioner, magistrate, sheriff, constable, or any persons whomsoever, for acts done under any English or provincial statute, they are to plead the general issue, or any brief plea, setting forth generally that such act was done in pursuance or by virtue of such statute; and on the trial give the facts in evidence on which they rest their defence, without pleading specially. Abuse of authority by a justice of the peace proceeding from interested or malicious motives makes him liable to punishment as a criminal by indictment or information, but the courts discourage all attempts to render justices liable for venial errors, or small irregularities not arising from any bad intentions.

Justices of Peace are also empowered by act of 1822, 3, Geo. 4. Cap. 30, contd. by other acts, to try civil actions for debts not above £5. One Justice may decide in cases not above £3. from £3 to £5 two Justices, and if the claim is under twenty shillings, the decision is without appeal. But this and other branches of their jurisdiction in a variety of civil and criminal matters, will be more minutely explained in subsequent parts of this epitome. The Chief of the justices of peace is called the *custos rotulorum* (keeper of the record rolls:) He is named by the executive, and by him is appointed the clerk of the peace for the county, whom however the sessions may suspend or discharge on sufficient grounds by stat, 1. W. & M. st. 1, c. 21, sec. 6. See 4, B. C. p. 272. The clerk of the peace commits examinations (in criminal investigations) to writ-

ing and is the secretary and register of all proceedings of the sessions of the county.

County Revenues and officers for their collection.

Besides the general revenue of the province, each county has a revenue of its own for the purpose of maintaining its local establishments for the poor, and the expenses of criminal justice, as well as many other charges of different kinds that fall on the counties. Absent proprietors of land are bound to contribute to all these except the poor rates, and are also taxed for the support of highways. The township of Halifax is excepted from this rule. If the rates are not paid by any person for such lands, the sessions are authorized to take the goods of the owner for that purpose if they find any within the county. If not, they are to let the lands and pay the tax out of the rent, or if that prove insufficient the supreme court is authorized to sell a sufficient part of the land to pay it.—5, Geo. 3. c. 5, 1. P. L. 110. 33, G. 3. c. 6, 1, P. L.p. 317. The treasurer of the county must be a freeholder, chosen by the grand jury, and approved of by the court of assize or sessions. He is sworn to execute his office faithfully and his appointment lasts for one year. He is allowed £10 for salary.

The grand juries in each county, at the supreme court or sessions, present the sums necessary to be raised for building or repairing county g ıols and court houses,—for erecting stocks and pillories, for enclosing pounds,—for providing bolts and shackles and conveying prisoners for treason or felony to the county gaol, and for the support of accused persons in gaol who are poor, for building or repairing bridges,for the salary of the clerk of the peace (which they settle,) the compensation to the jailor, (also in their discretion,) and the necessary expence of maintaining all poor prisoners in the county jail. 5, G. 3. c. 6. 1765. 1, P. L. 111. 9 & 10 G. 3. 1769. c. 1. 1, P. L. 154. 30, G. 3, c. 9.

1790. 1, P. L. 281. 36, G. 3. c. 16. 1796. 1, P. L. 382. 48, G. 3. c. 19. 1807. 2, P. L. 21.

Two collectors of county rates are appointed in each township by the grand jury and sessions of the county, the jury nominating 4 persons of whom the sessions select two to serve for the year. Three assessors for each township are also appointed in the same way, act of 1777, 17, G. 3. c. 1, s. 1. vol. 1, p. 205. The sessions apportion the sum presented, fixing on each township and settlement, the portion they think it should bear, 1765, 5, G. 3, c. 6. sec. 6. 1, P. L. 112. The assessors serve under an oath of impartiality, and a fine of 40s. is imposed by the last quoted act on their refusal.

The monies thus collected are paid over by the several collectors to the county treasurer, who is by same act to account quarterly to the sessions. The collectors are by act of 1813, 53, G. 3, c. 12, 2, P. L. 109. subjected to a fine of £10 for any negligence in paying over their amounts quarterly.

By act of 1817, 57, G. 3. c. 10. v. 3. p. 10, the justices are empowered to hold special sessions if necessary on 8 days notice, to hear appeals from the rates, and decide on their merits. Rates not duly paid are to be levied by distress and sale of the goods of the person assessed. The assessors at Halifax are to be allowed 30 days after swearing in to complete their assessment. In the country, ten days are allowed. In Halifax the justices of the town are to appoint collectors and call them to account. The sessions have the power of fixing the remuneration of collectors of rates, not however to exceed 5 per cent on sums collected.

The county assessments are paid by all inhabitants and by absentee land proprietors; there are also certain funds belonging to the counties, derived from duties on licensed houses, and on hawkers and pedlars.

Under the acts to regulate the sale of spirituous liquors by retail, the justices of the peace in each county have the power of granting licences under certain regulations, and an annual sum is paid by each retailer for his licence. The clerk of licences in Halifax county, is appointed by the governor, in other counties the justices select one out of three candidates returned by the grand jury. The office is not annual, but continues during pleasure; he has certain fees, and 7 1-2 per cent commission, and pays over quarterly the amount he receives to the County Treasurer. The proceeds of this fund in Halifax county, are appropriated as follows:—Three fifths are paid quarterly by the county treasurer, to the commissioners for the streets of Halifax, to be laid out in their repair, and two fifths are paid towards the salaries of the Police department at Halifax, under the orders of the sessions. In all the other counties the proceeds of the licence fund are to be appropriated and applied in the making and repairing of roads and bridges, and establishing of ferries, under the orders of the sessions. The clerks of licence give bonds with two sureties, for performing their duty, and the clerk of the sessions receives 2s. 6d. fee for writing the bond, act of 1799. 33, G. 3. c. 13. v. 1. p. 411. 1801. 41, G. 3. c. 12. 445. 1806. 46, G. 3. c. 3. v. 2. p. 2. 1815. 55, G. 3. c. 17. sec. 5. 2. P. L. 158.

Hawkers and pedlars by act of 1782. 22. G. 3. c. 1. 1, P. L. 225. are subject to certain regulations, and pay for licences which are issued in the same manner as spirit licences, by the same authorities; and by act of 1815. 55, G. 3. c. 8. 2, P. L. 149. the fund thus derived is added to the spirit licence fund, and appropriated in the same way.

Besides the management of these funds, the grand juries are authorized by very many acts respecting fires to assess on each township the expences attendant on fire, engines, ladders and other articles, directed to be kept for the pre-

vention and extinguishing fires. The revenues of counties and townships are augmented by the rents of public buildings, and fines and forfeitures incurred under a multiplicity of Provincial acts.

Besides the foregoing officers each county and district has its clerk of the peace, its deputy register of conveyances of land, its judge (and registry) of probates of wills and letters of administration, &c. overseers of the river fishery, by act of 1775, &c. whose duties will be described hereafter.

Township Officers.

The grand juries of each county annually at the first sessions in the year, nominate for each township, candidates for the following town offices, viz.* Surveyors of the lines and boundaries of the township, overseers of the poor, both offices united in the same persons,—a town clerk who is sworn to keep the records of the township proceedings and other matters connected with his duty, constables, surveyors of highways, fence viewers, clerks of the market, pound keepers, cullers and surveyors of fish, surveyors of lumber, scalers of leather, gangers of casks, hogreaves,† measurers of grain, salt and coals, inspectors of lime and bricks, inspectors‡ and repackers of beef and pork, surveyors and weighers of hay§ inspectors of flour and meal,‖ inspectors of red or smoked herrings¶ and inspectors and weighers of 1 beef, inspectors of thistles.2 The former regulations directed (for most of the

*	By 5, G. 3. c. 1.	-	-	1765.	1, P. L. 106,
†	32, G. 3. c. 4.	-	-	1792.	do. 291,
‡	34, G. 3. c. 9.	-	-	1794.	do. 336.
§	17, G. 3. c. 1.	-	-	1777.	do. 204.
‖	36, G. 3. c. 8.	-	-	1796.	do. 377.
¶	38, G. 3. c. 2.	-	-	1798.	do. 392.
1	10, G. 4. c. 17.	-	-	1829.	
2	31, G. 3. c. 6.	-	-	1791.	do. 286.

offices,) twice the required number of persons to be returned by the grand juries, from which list the sessions selected ; and the numbers of each description of officers were fixed by law : but by later enactments* the grand juries are directed to return such number of candidates as the sessions direct, as the numbers before limited by law were found insufficient. Poundkeepers in each township are appointed by the sessions.†

Inspectors of butter in Cumberland county, are in the like manner appointed.‡ Town criers are also taken notice of in the consolidated trespass act§ Besides the foregoing catalogue, there remain the assessors of poor rates, who are chosen‖ by the semi annual meetings of the freeholders of each township or settlement, and the assessors appoint the collectors of that rate, which is the only regular fund managed by the township authorities, without the intervention of the sessions and grand juries of the county. —Cullers and surveyors of dry fish, surveyors of lumber and surveyors of cord wood are to be appointed by the grand jury at sessions annually.¶

Constables are officers known to the English law, from an early period, and their general duty is to preserve the peace within their district, and they possessed at common law for that purpose extensive powers of arrest, imprisoning, breaking houses &c. in cases where such strong courses are really necessary to prevent violence and crime, or to bring atrocious offenders to justice. Most of the modern statute laws having invested justices of the peace

*	By 51, G. 3. c. 24.	- -	1811.	2, P. L.	79.
†	40, G. 3. c. 7	-	1800.	1, P. L.	424.
	3, G. 4. c. 22.	- -	1822.	3, P. L.	137.
‡	42, G. 2. c. 2.	- -	1802.	1, P. L.	456.
§	3, G. 4. c. 32.	- -	1822.	3, P. L.	140.
‖	4, G. 4. c. 6.	- -	1823.	3, P. L.	149.
¶	2, G. 3. c. 8.	- -	1762.	1, P. L.	82

with large and discretionary powers for the same objects, the chief duty of constables now consists in their attendance on the different courts of justice and police office, to enforce order and in the execution of such written warrants or verbal orders, as they may receive from the authorities of the law. These duties are regulated by many of the statutes of the province, and will be adverted to as we proceed.

BOOK I.—CHAPTER VI.

LAWS CONNECTED WITH AGRICULTURE.

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1. *Roads and Bridges.* The making and repair of roads and bridges are provided for by the labor imposed by statute law, upon the proprietors of lands and other inhabitants, for the roads and bridges of the township or settlement in which they reside, and also by grants of money by the legislature of the province. The statute labor is regulated by the act 7, G. 4, c. 2. 1826, 3, v. P. L. p. 231, and by the 8, G. 4, c. 23, 1827, and 10, G. 4. c. 45. 1829, in amendment. By these acts the grand juries and sessions in every county appoint as many surveyors of highways for each township and settlement as are necessary, (*see title Town Officers,*) The persons named are bound to attend and be sworn to the faithful discharge of their duties, within fourteen days after their appointment of which they are to receive notice, and their omission to do so or neglect afterwards in performing their duties, subjects them to a forfeiture of five pounds.

The labor is apportioned as follows, viz: The owner of a cart, team or truck must send it with two oxen, or with two horses, (or with one horse if he owns no more,) and a driver, to work on the roads or bridges for 4 days in each year, when directed by the surveyor, allowing 8 hours work daily. Other persons between 21 and 60 years of age, and able to work, are to provide themselves, with implements, and labor under the orders of the surveyor for six days in the year. In the instances of hired servants, minors between 16 and 21, apprentices, journeymen, and day laborers, the labor is diminished to two days in the year Substitutes able to work are permitted to be sent; the military of the regular troops and staff of the army are exempted.—The forfeiture or compensation for not performing this duty is as follows, viz: For the owner of two horses or oxen 10s. a day, of one horse, 7s. All others forfeit 3s. for each day's neglect. These sums are recoverable before on or more justices of the peace at the suit of the surveyor, as if they were debts, and he is to apply them to the repair of roads. If the surveyors think the labor of men preferable, they may call on the owners of carts, to send two men instead of their cart, &c. The constables are directed to make out lists of the persons liable to work, and of those who are to send carts, &c. for the use of the surveyor, and at his order they are to summon them to attend. This is to be done between the 20th day of May and the 20th day of September, and not to interfere with seed time, and harvest, and six days notice is necessary. The surveyors fix the time and place, and must superintend and direct the work and they are excused from any other labor on the roads. In the case of poor persons who cannot without injury to their families perform the labor, any two justices of the peace may lessen the number of days work at discretion. As in the case of new settlers, they often live at a distance of miles from any passable road, and must endeavor to make a road to their own dwellings, the justices in ses-

sions are empowered to grant permission to any one, to do his statute labor on any road they think proper, and the certificate of the surveyor, obtained within a month after such work is done, prevents any further claim on him. Persons above 60 years keeping carts, &c. are only obliged to send their cart. The surveyors are to take the direction of two or more Justices of the peace, in the altering or repairing any road. In winter the inhabitants are obliged to labor under the directions of the surveyor for one day, whenever any very heavy fall of snow obstructs the roads, under a penalty of ten shillings on each defaulter.

At the end of his year of office, each surveyor is to account under oath to the sessions for all his proceedings, and pay over the money into the hands of his successor, under penalty of ten pounds. For the preservation of side paths the sessions of each county and district are to make regulations under fines between 5s. and 40s. for their violation.

Persons living on islands, in which there are roads, or islands bridged to the main land are exempted from performing statute labor on the main land, and must perform it on the bridge or road in the island. Penalties are enacted for encumbering, or injuring roads, for trailing logs on them except over the snow, and for destroying trees that grow between any road and the sea, rivers or lakes, wherever the road is within 30 feet of the shore or margin. 3, P. L. 231.

The expenditure of Provincial funds specifically granted for roads and bridges, by the assembly is regulated by the act 4 & 5, G. 4. c. 14. 5 v. P.L. p. 183, by the 7, G. 4. c. 2. s. 17, 1826, 3 v. p. L. 231. 8, G. 4. c. 23 & 29, 1827, and 9, G. 4. c. 14, 1828. The governor and council are empowered to appoint and remove the commissioners for the expenditure of sums granted for roads and bridges. (In

practice they are usually recommended every year by the members for each county and town.) The secretary of the province prepares a list of them for the use of the treasurer and makes out their commissions and bonds within 20 days after their appointment. He is also to notify them of their nomination which is done by publication in the Gazette, and the clerks of the peace in each county take the bonds and attend to their regular execution by the sureties. The sureties must be approved by two Justices of the peace of the county. The commissioners are allowed 5 per cent commission out of the sum they expend.

The commissioner having given proper security receives a warrant from the Secretary's office under the governor's hand upon the treasury of the province, for the amount to be expended, but the treasurer must retain two thirds of the amount until the whole work is completed and regularly approved and certified.

If commissioners enter into bargains with contractors, it must be done after 10 days or longer public notice; they must take security from the contractor, and transmit a copy of the contract to the Secretary's office. They are not to pay the contractor more than one third, till his work is completed and certified, and a form is prescribed in the act of 8, G. 4. 1827. c. 29. for the contracts to be entered into. A form is prescribed in the same act, for certifying the performance of the work, which must be signed by 3 or more justices in General or Special Sessions for the county.

If the commissioner superintend 10 or more laborers he has an allowance of 5s. a day besides his commission.—No laborer must have above 4s. a day, and the day's work is to be ten working hours.

The commissioners must produce the receipts of the laborers employed, and also account upon oath; which oath any justice of the peace is to administer without fee. Contracts are forbidden except in building or repairing bridges

or opening new roads. No one commissioner is to employ more than forty laborers at one time, and all laborers must be paid in money.

For every ten laborers the commissioner is to appoint a foreman, who works with the rest and directs the work also in the absence of the commissioner. The foreman may receive 5s. per day, and no more. Commissioners must not hire teams at a larger rate than 10s a day for a cart, driver, and two horses or four oxen, and 7s. 6d for a cart, driver, and one horse or two oxen. There is to be no allowance for extra hours of labor. Commissioners are to make a return of any encroachments they discover on the road, to the Supreme Court or sessions of the county.

Commissioners are prohibited from laying out any new road, or making any alteration in the line of an old one, if such new road or altered line will be productive of a demand on the government, by the owners of the lands, over which the new piece is to run, until they lay before the governor and council a plan of the work proposed with an estimate made by three "credible and well qualified" persons of the probable expenses of compensating the proprietors, and of making the new road or alteration. The Commissioner is not to begin any such work, until he receive an order of the governor and council to that effect. (act. 7. G. 4. c. 2. s. 17. 3 v. P.L. 233.)

The act of 1827. 8 G. 4. c. 23, section 3. directs the Commissioner immediately on receiving such an order, to notify it to all persons interested, and to require them to name an appraiser to act on their part, an appraiser on the part of government being named in the order in council. The two appraisers are then to be sworn by a justice of the peace, "faithfully and impartially to lay out "such road in the way most advantageous to the public "and least prejudicial to the owner of the lands, and to

"appraise and value the lands wanted for such road; "the damages to such owner or owners." When sworn they are to go on the lands, and lay out the road to the best of their skill, and estimate the loss sustained by the owner in improvements and land, and the inconvenience and expence of fencing to be incurred. Their valuation with a plan and measurement of the roads, as they have laid it out, is then to be returned to the Prothonotary or his Deputy for the county, who is to lay it before one or more judges of the Supreme Court, or before the senior judge, and one or more other judges of inferior court for the county. These courts are authorised to confirm or annul the return after hearing the parties, if they on notice appear to request a hearing. The court may order the same appraisers to make another return, which shall be final. If the appraisers at the first cannot agree, they are each to make a separate return in the same way. The judges are then to appoint a sworn umpire and his decision if it concur with either of the two returns shall confirm it. If the owners of land refuse or neglect to appoint their appraiser, the courts are authorized, after notice, and hearing parties if they attend, to name in the stead of such as persevere in not naming.

If proceedings are irregular, the courts are authorized ont complaint on either side to set them aside and name three persons who are to proceed as before stated.—Sec. 4.

The surveyors of highways of each township are authorized to lay out particular and private ways either open or pent, with swinging gates, under the direction of the sessions who are to establish such roads at the application of the parties interested. Any individual injured by them is to be compensated by agreement with the surveyor, or else by lawful valuation, and the expence is to be assessed and collected as the poor rate is, 7, G. 4. c. 2. s. 16. 3. v. P. L. 233. The sessions are empowered to direct as many gates and bars, to be established on such private roads as

they think fit and to make regulations on the subject.—8, G. 4, c. 23 sec. 2d, 1827. and may impose fines between 5s. and 40s. for the breach of them, to be prosecuted on oath before a justice of the peace, and the proceeds to go to the poor of the township. All roadwork must be done between the 20th May and 20th September, (except the governor direct otherwise on one of the great post roads.) 9, G. 4, c. 14, sec. 6. 1828. More particular regulations exist as to the streets of Halifax, and some other towns which will be noticed under the head of local laws.

Act of 1826. 7, G. 4. c. 2. 3, P. L. 234. 235. sec. 22.—Imposes £5 penalty on any person who 'shall alter any 'public road or highway, or any private road'—'laid out 'and established by law, or shall make any encroachment 'thereon, not being lawfully authorized so to do.'

Sec. 23. Any one justice of the peace upon his own view, or 'the oath of one credible witness,' is to 'impose 'a fine not exceeding 20s. on any person who shall encum-'ber any of the highways, roads, streets or bridges in this 'province, by laying timber, wood, carts, rubbish, trucks, or 'any other thing thereon, to be recovered by warrant of dis-'tress, and sale of the offender's goods and chattels.' If the offender is not known or cannot be found, then the articles encumbering the road &c. may be sold to pay the fine. The fine is to be paid over to overseers of the poor, for the use of the poor of the town or place where, or nearest to which the offence shall be committed; overplus, if any, to go the owner when he is discovered. If the nuisance be continued it is a new offence, and may be again prosecuted for similar penalty.

Sec. 24. Empowers the sessions in each county and district, to make rules to prevent damage to side paths of roads and streets. For breaking any such rule, offender

is liable to fine from 5s. to 40s. on conviction before any one justice of the peace, to be levied by warrant of distress, and sale of offender's goods and chattels; fine to be applied to repairs of such sideways.

Sec. 27. Any persons trailing on the 'roads or high-'ways' 'any logs, timber or other lumber, when the same 'are bare of snow, or the frost in the ground insufficient 'to support the cattle travelling thereon,' liable to fine from 5s. to 20s. for every offence, recoverable before any one justice of peace of the county or district where offence is committed, on his own view, or oath of one credible witness, to be levied by warrant from the goods and chattels of offender.

2. *Ferries.* The Provincial act of 23, G. 3. c. 10, 1 vol. P. L. p. 237. respecting ferries, empowers the justices in general or special sessions for each county, to establish such ferries within their county, as they think necessary, and license ferrymen under such regulations as they consider right, for the breach of which they may impose fines not exceeding 40s. The ferrymen thus appointed have an exclusive right, and the carrying persons for hire over such a ferry unless by their consent, or on their neglect and refusal to give due attendance, subjects the offender to a fine not exceeding 20s.

If the ferryman neglect his duty, any one else may discharge it and take the fares until a new ferryman be appointed. By the Militia stat. 1 & 2, G. 4, c. 2, sect. 40, 3 v. P. L. p. 82, licensed ferrymen, are exempted from training, but must be provided with arms, &c.

3. *Sewers.*—A Sewer is defined in our law books, as a fresh water trench with banks, to carry the water to the sea and prevent the inundation of low grounds. Many acts

of Parliament were made in England at an early period on this subject, for the improvement and preservation of low grounds. The very great quantity of land of the first quality contained in the sea marshes on the bay of Fundy, and the rivers flowing into it, render the embankments and drains required for its cultivation of the first importance to the agricultural prosperity of Nova-Scotia. Many laws were made on the subject by the Provincial legislature, but the whole have been repealed and their substance, as improved by experience, embodied in the consolidated act of 1823, 4, Geo. 4, c. 13, 3 v. P. L. 155, which is in some points altered by the act of 1829, 10, G. 4, c. 37. By these acts upon the request of the proprietors of marshes, meadows or low grounds, where dyking and embankment may be the thought necessary to keep out the sea, or to redeem wet or swampy lands, the governor and council are empowered to grant commissions of sewers for such lands, to as many persons as they may think proper. The commissioners of Sewers are empowered to meet together as occasion requires, and to decide on the method of proceeding,—to cause dykes and wears to be built when necessary, to employ workmen, to assess and tax the owners of the lands for the expenses, proportioning the rate to the quantity of each person's land, and the benefit it will derive from the work.

They are not to undertake the building of a new dyke, or wear, without the consent of the proprietors of more than half the land, to be enclosed and protected by it, but they may drain and repair lands already dyked in, on their own authority.

When the expense of the work done shall exceed 5s. per acre, the commissioners are to call a meeting of the proprietors who are elect five assessors who shall be sworn and shall apportion each proprietor's share of the tax or rate. If a proprietor has not assented to the building of a dyke and its expenses are above 5s. per acre, his land en-

closed by that dyke is liable for his rate, but his person, goods and other lands are not bound to make it good.

The commissioners are to be sworn, and they appoint collectors of the dyke rates who are also to be sworn. The commissioners are allowed to charge 10s. per diem each while actually employed, and also reasonable allowances for the collectors and the clerk. They are to keep a record of all their proceedings, accessible to all parties interested on paying 1s for a search, and copies must be furnished if demanded and paid for at the rate of 6d per 90 words.

If any proprietor fail to pay his rate, the collector is to swear before a justice of peace to the demand, and the justice thereupon to sign and seal a warrant authorising any constable in the county, by name, to distrain the goods of the proprietor, and sell them to satisfy the rates due, with costs which are not to exceed 10s. in any one case. When rates are not paid the lands rated or part of them may be let or sold to pay their owners rate, school lands and clergy lands are not to be sold for rates. Any justice may let on 20 days notice, but the sale must be by the sheriff or deputy, after three months notice given by the commissioners in the Royal Gazette, the sheriff's charge is limited to 10s. in these cases.

In all common cases where works are to be made, the proprietors on six days notice from the commissioners or any of them, are to attend in person, or send substitutes, with teams, implements, &c. to accomplish whatever is requisite, and their quota is to be settled by the commissioners, in proportion to the quantity of the dyke land each owns. Where a sudden breach takes place, or inundation is threatened, the six days notice is to be dispensed with. Those who omit to attend and work, or send men and teams forfeit 5s. a day, for each man, and an equal sum for each

team, they should have furnished, and this forfeiture is doubled where the work is rendered necessary by a sudden breach of the dyke. These fines are collected and disposed of as the dyke rates are.

If any proprietor's dyked lot shall be injured by cutting off sods or soil to make a dyke, or if such a lot shall be lessened in dimensions by the building of new dykes, he shall be compensated either by a sufficient piece of the common and undivided marsh if there is any, or if not, in money. The quantity of damage is to be ascertained by five freeholders, not interested, and the commissioners are to decree possession of land, or contribution by the other proprietors according to such valuation. If any person pasture cattle near the dykes, and the dykes receive injury in consequence, two or more commissioners are to make an order commanding the party to repair the mischief by a certain day. If he fail to do so, the commissioners shall cause the injury to be immediately repaired. Such disobedience incurs 10s fine, besides the cost of the repair, recoverable before any justice of peace of the county, and to be levied by warrant of distress under the justice s hand and seal.

Any proprietor conceiving himself aggrieved by the proceedings of the commissioners, can appeal from them to the supreme court, by giving security for costs and suing out a writ of *certiorari*. The oaths of office of the commissioners, collectors, assessors, &c. are to be in writing, and to be administered by any justice of peace, in the presence of the clerk of the peace for the county. The clerk of the peace is to register such oaths in his books and the record to be good evidence of the oath having been duly administered.

The necessity of pleading specially on the part of public officers when prosecuted for acts done in pursuance of these laws of Sewers is dispensed with.

4. *Rivers.* The justices at the first quarter sessions annually in each county are empowered to make rules and orders from time to time, for the regulation and preservatiou of the river fishery, viz. of salmon, bass, shad, alewives and gaspereaux.—3 & 4, G. 3, c. 2, 1763, 1, P. L. 89, and at special sessions may regulate the setting of seines and nets in havens, rivers, creeks and harbors,—1 v. 247. Penalties may be affixed to a breach of these rules, but must not exceed £10. If under 20s. recoverable before one justice of peace to £3. before two, if higher before any court of record. See 15 & 16, G. 3. c. 10, s. 1, 1775, 1 v. P. L. 200.

The Justices in sessions are to appoint two or more overseers of the river fishery who are to be sworn. These overseers are empowered to remove any nets, wears or other obstructions that shall be found in any river contrary to the regulations. If not claimed after ten days notice, the articles seized and the fish found in them are forfeited and are to be sold and any overplus beyond the penalty incurred to be paid to the overseers of the poor, of the township for the use of the poor.

Those regulations are not to affect rivers to which fish do not resort in the seasons for spawning. (See act last referred to.)

By the act 26, G. 3. c. 7. 2d session, 1 v. P. L. 247. It was directed that in all rivers resorted to by fish for spawning, the milldams or other obstructions should have a sufficient waste gate or passage open for the fish during their season. The sessions are authorized to order the sheriff to hold a jury of enquiry upon complaint for breach of this law, giving notice to the party accused; on a verdict against the party accused, the sessions may find him from £10 to £50 with costs and order him to remedy the evil. The fine recoverable by distress, or if he has not goods he

is to be committed to gaol for 3 months. If the order be not obeyed the sessions (on proof) are to order the sheriff to prostrate and remove the obstruction, in which service he is authorized to demand any person's assistance.

The sessions are also directed to establish such rivers as are necessary for floating lumber, and passage must be allowed in these, wide enough for lumber, under the same penalties and rules as provided, respecting the passage of fish.

By the same act, the proprietors of the lands on the banks of rivers and streams, are declared to have the sole and exclusive right of fishing in such parts of the stream as their land bounds, but the sessions may notwithstanding appoint fishing places in any river to which any one may resort and fish freely.

By an act of 1829. 10, G. 4. c. 40. the eel fishery is thus protected. Eels are forbidden to be taken between the 1st May and 20th June, under a fine of from £2 to £5.—Eel pots &c. set at that time are forfeited ; this is however not to affect the rights of proprietors to fishing in their own limits.

(An act of 1824, forbids the catch of trout in Halifax district, between the 1st October and 1st January, under penalty of one shilling for each trout, or 8 hours imprisonment. This has a clause allowing Indians and the poor settlers to catch for their own use.) 3, P. L. 191.

By act of 1818. 58, G. 3. c. 31. 3, P. L. p. 35. Timber may be brought down rivers at such seasons as the sessions may appoint, doing as little damage to the land on the banks as possible.

Lumberers may remove obstructions, and rubbish from the channel under rules made by the sessions, but this is not to extend to mill-dams.

The regulations on this head may contain penalties between 5s. & 40s. recoverable in any court of record, half to the informer and the other half to the roads of the county.

By the consolidated trespass act, of 1822. 3, G. 4. c. 32. sec. 15. 3, v. P. L. 139. the fence viewers of the township or place determine what rivers are sufficiently deep and inaccessible to prevent the passing of cattle, and these are legal fences or boundaries—the same rule is extended to creeks, bays, harbors and inlets of the sea.

(By act of 1828. 9, G. 4. c. 34. an officer is appointed called keeper of the fish and timber gates, for Barrington river. Expences incurred by him to be defrayed by a rate on Barrington township.)

5. *Commons.* The stat. 10. G. 3. c. 4. 1770. 1, v. P.L. 160. gives power to the General Sessions in each county, from time to time, to make regulations respecting Commons,—under penalties not above 40s. for each offence, recoverable by distress warrant granted by two Justices, half the fine to the informer and half to the poor of the township. In the absence of goods distrainable if the fine be not paid, the offender may be committed for a period not exceeding 10 days.

By act of 1822, c. 32. sec. 14. persons cutting the sod off a Common or carrying away the soil, are liable to a penalty not to exceed 20s. or 8 days imprisonment if it is not paid. There are local laws respecting the Commons of the townships of Annapolis, Lunenburg, Lahave and Dartmouth, and one has been passed for Halifax, but it is not to operate until his Majesty's pleasure shall be known.

6. *Common Fields.* The act of 1827. 8, G. 4. c. 26. sec. 1. directs that every brand or mark adopted by the proprietors of any common field for horses or cattle, to be turned into it, before it is used, shall be entered by them

in a book, to be kept by the town clerk. His fee for recording a brand or mark 1s. Sec. 2. imposes £10 penalty on town clerk, entering more than one mark of the same description, recoverable by any who will sue in any court of record—half to the informer, half to poor of the township or settlement, Sec. 3. Proprietors branding cattle to turn them in with brand not recorded,—others imitating the recorded brands, or using them without authority to mark cattle, on conviction before two justices of the peace, to be sent to jail from 1 to 3 months, or fined from £3 to £5 and costs, at the justices' option, fine to be levied by warrant of distress and sale of goods &c. Fine to be paid over to the overseers for the use of the poor of the place.

By the act of 1829, c. 27, the proprietors of any common field may hold meetings, and make regulations for the ordering, fencing and improvement of their common property. They are to enter those rules in a book signed by their chairman—which is to be good evidence. They also are to appoint annually a managing committee, of from three to five of their number. This committee are empowered to assess them for necessary expenses, and to appoint a collector by written authority, who may sue for rates. The committee men are to be allowed 5s. a day for the time they are actually engaged in carrying the regulations into effect. Three days notice must be given of the general meetings of proprietors, and the consent of so many as own a major part of the land, make regulations binding. This last act is as yet but temporary, having been passed for three years.

7. *Fences.* The provincial law, for the protection of the cultivator of the soil in his useful labors, has given easy and ready modes of obtaining compensation for any injuries done to his improved land, by the cattle of his neighbors, if he has taken care to make enclosures of a reasonable height and strength. For the regulation of

this matter, we have already seen that in every township, fence viewers are annually selected, and for their guidance the act 3, G. 4. c. 32. 1822. 3, P. L. p. 136. that fences and hedges should be 4 1-2 feet in height.* These must be good and substantial, and extended to all parts of the cultivated lands of the proprietor, except where the sea, unfordable streams, or ponds of sufficient depth, afford a natural protection from cattle. When cattle or swine break in and do mischief, the owner of the ground is directed to bring a fence viewer to inspect the enclosure, and to have the damages ascertained by three neighbors sworn for that purpose by any justice of the peace of the county, and if the owner of the cattle on notice refuse to pay the amount, the injured party may sue him before justices of the peace, or the inferior court, according to the amount of the damages.

When two cultivated fields, belonging to different owners, bound each other, and either proprietor through stubbornness or neglect will not make his proportion of the fence good; or (by act 1827. 8, G. 4. c. 27 s. 4.) the proprietor of a field adjoining an enclosed and improved common field, will not make his part of the fence good, any fence viewer after giving him three† days' notice, may rebuild or repair it, if he neglect to do it himself and the fence viewer is allowed to charge and recover double the amount expended from the defaulter, charging 3s. a day for his own trouble, and a fence viewer omitting this duty when called upon, is to be fined 40s. for each offence.

The wanton destruction of fences and other enclosures is subjected to a penalty of ten pounds, half to the government of the province, and half to the informer, to be reco-

* Except on the peninsula of Halifax, where 4 feet is sufficient by the act.

† Act of 1828, c. 12.

vered at the Sessions or any court of record. If the offender be unable to pay, he is to be imprisoned and put to *hard labor for two months, or to be whipped* at the discretion of the Court.—Sec. 9, 3 P. L. 138.

Sportsmen and others found trespassing in cultivated enclosures are subjected to a fine between 5s. and 10s. and costs, recoverable before any justice of peace of the county, half to the owner of the land, and half to the poor of the township. Sec. 19, 3 P. L. 140.

8. *Pounds.* By act of 1800, 40 G. 3. c. 8, 1, P. L. 424. The sessions, at the recommendation of the grand juries, are to establish as many pounds as are necessary in each township and settlement in the county, and appoint a commissioner for building them. If the owner of land find cattle, goats or swine trespassing on his enclosures, he is authorised to carry them to the pound where they are to be detained. The pound keeper's duty is to cause them to be cried or advertised in three of the most public places of the township or settlement. The owner must pay the damages, and also 1s. a head for their support (or 6d for smaller animals, before he can receive them back; and if he refuse to pay, after 8 days impounding, they are to be publicly sold to pay damages and expenses. Trespass act of 1822, c. 32, 4th section, 3, P. L. 137. By the 5th section of the same act 20s. penalty is imposed on the rescue of cattle or swine driving to the pound, and £5 penalty for breaking a pound, or taking cattle, &c. out of one irregularly.

9. *Cattle.* The sessions are authorized in each county, to make regulations to prevent horses or cattle infected with contagious distempers from going at large, and may impose fines up to £10 which are recoverable before two justices of the sessions, 1779, 19, G. 3. c. 2. 1 P. L. 214. The malicious killing or wounding of cattle is made pu-

nishable by imprisonment or public whipping at the discretion of the Supreme Court or sessions, and the owner may recover treble damages ; but the offender is not to be sentenced in damages if previously punished as a criminal, and *vice versa*, if he has paid damages he is to be free from whipping or imprisonment, 1824. 4 & 5, G. 4, c. 4. 3, P. L. 181. If the owner or person having charge of cattle wantonly and cruelly injure them, he is liable to a fine between 5s. and £3, which one magistrate may impose, and if he cannot or does not pay, to imprisonment not above 20 days, 1825. 6, G. 4. c. 22. 3, P. L. 213.

The sessions are to make regulations to prevent the clandestine removal of sheep and lambs, with penalties not exceeding £5, recoverable before two justices or the sessions. 1779. 19, G. 3. c. 7. 1, P. L. 215.

Any person keeping dogs which have been known to kill sheep or accustomed to worry them, after notice, is liable to pay the owners 10s. a piece for any sheep or lambs they may kill, and also a fine of £3, half to the poor and half to the prosecutor, recoverable before one justice. 1794. 34 G. 3. c. 2. sec. 1. 1, P. L. 331.

A Wolf having at that time paid a visit to the province, the sessions and grand jury were by the same act directed to grant rewards for the extirpation of their race. They are not among the wild animals native of the province, and no other instance is knownof their appearance. A law did exist to encourage the destruction of other beasts of prey by rewards, but it has expired long since.

The Justices in General Session are empowered to make regulations, to prevent trespasses by cattle going astray or at large, under fine not exceeding 40s. recoverable before two justices or the sessions. 1822. 3, G. 4. c. 32. s. 6 & 7. 3, P. L. 138.

Swine and Goats from their real or supposed propensities for mischief are not only included in the last mentioned

clauses, but are honored with special superintendants in each township called hogreaves, (an office conferred on the gayest beaux in Halifax.) These creatures if found at liberty, out of the ground of their owner, are forfeited, and the hogreaves are bound by oath to seize and sell them.—Any other person may do so, if the hogreaves are not present. Sec. 8. (1822.)

10. *Thistles.* This prolific weed has been made the subject of an act, the 31, G. 3. c. 6. The sessions are to make regulations to prevent its growth and increase, and publish them by posting them up in the most public places in every township.

The sessions are moreover to appoint annually two inspectors in each township, to carry their regulations into effect, who must not refuse the office or neglect the duty of it under £3 fine. Other persons violating the regulations are liable to 40s. fine for each offence. Those fines are recoverable before the general sessions. The act is directed to be publicly read at the first sessions in every year, after the grand jury are sworn. vol. 1. P. L. p. 286.

11. *Burning Woods.*—The process of clearing and improving the country, requires the frequent burning of woods, underwood, marshy soil, &c.—and much caution as to the season at which the fire is used, is necessary, to prevent the fire when once kindled, from spreading to a mischievous extent. To guard against such consequences the act of 1761. 1, G. 3. c. 5. 1, P. L. 67, directs the grand juries at the March sessions, annually to make regulations with the approval of the Justices. The fines for their violation are not to exceed £5, and prosecutions must not be later than 3 months after the offence.

12. *Grist Mills.* Millers are obliged to grind any grain for which their mill is prepared, and to bolt any wheat, rye, or buckwheat, ground at their mill. They are entitled to

1-16 for grinding, to be ascertained by a sealed measure, and to one pint per bushel for bolting. If they refuse to grind, or to bolt what they have ground, or take more toll than their due, they are liable to 40s. penalty, which is recoverable before two justices of peace. See acts 1770, 10 G. 3, c. 8, P. L. 162, 1782, 21, G. 3, c. 5, 1, P. L. 224, 1787, 28, G. 3, c. 2, 1, P. L. 252, and 1815, 55 G. 3, c. 4, 2, P. L. 148.

13. *Running the Bounds of Townships.* The Surveyors of lines and bounds in each township are once in three yearsf to run out the boundary lines of the township, and renew its marks. It is to be done on the first Monday in March, and the surveyors of adjacent townships are to give each other six days notice, and those who neglect to attend, forfeit 40s. each, recoverable before two justices. If the persons notified do not attend, the others in attendance are to go on without them. Act of 1765. 5, G. 3, c. 1.sec. 3. 1, P. L. 107.

BOOK I.—CHAPTER VII.

LAWS OF INSPECTION AND REGULATION CONNECTED WITH AGRICULTURE AND TRADE.

Inspections. The province laws have subjected to particular inspection a number of articles of provision, building materials, fuel, hides and leather. This regulation is intended to protect purchasers in the province, from imposition, and to establish in foreign markets a good character for articles produced or manufactured in Nova Scotia.

A. Articles of Food.

1. *Fish.* Merchantable codfish, (usually called dry fish) is directed to be of the quality considered merchantable at Newfoundland, act of 1762, 2, G. 3, c. 8, sec. 1, 1 P. L. 81. By the same act, the staves of hogsheads must be 40 inches long, 6 broad, and three quarters of an inch thick on the thin edge. Hogshead hoops to be 15 feet long. and 3 1-4 inches thick on the thin edge, and to be substantial and well shaved. Dry fish offered for sale

or shipped for exportation without the certificate of a culler of fish, is forfeited by the seller or shipper. Cullers are to be allowed 1d. per quintal, (to be calculated on the whole quantity subjected to their inspection, by act of 1830. 11, G. 4. c. 3.) and 4d. per mile travel, for their duties. In the case of vessels bound to a market in Europe, this certificate must be produced to the Collector of the Port, before the vessel can obtain a clearance. 29 G. 3, c. 11, sec. 3, 1 P. L. 274, (1789.) The same act imposes a penalty on a culler passing unfit fish, to the amount of its full value. The 16th clause of the act of 1762, 1, P. L. 83, gives the form of oath of office to be taken by the cullers of dry fish.

The inspection of red or smoked herring was regulated by an act passed in 1798, 1, P. L. 392, which was temporary, and appears to have expired.

By the acts of 1828, 9, G. 4. c. 20, and 1829, 10 G. 4, c. 30, a complete code or system is established, to regulate the sale and export of pickled fish, of which the following is an outline :—

A chief inspector for the province is commissioned by the governor. He is to give bonds with three sureties in £500 penalty. and also to be sworn to perform his duty. With the sanction of the Governor, he appoints and removes deputies, at every port, and in as great number as the sessions in each county choose to direct. He is to take bonds with two sureties from each deputy in a sum not above £250. The deputies must also be sworn. The principal inspector is liable to be sued for their misconduct or negligence, and he may have recourse against them.

The exporter is obliged to produce a certificate of the inspector or deputy for his fish, and any fish carried inland for sale or shipped for exportation, which has not been duly inspected and branded, or which is tainted or damaged is forfeited.

The fees allowed for inspection are 1s. 3. for each certificate. For branding, a tierce 10d; barrel 7 1-2; half barrel, 5d; exclusive of the expence of packing and coopering. For the inspection of empty barrels, 1d each, and 6d per mile travel when necessary. The inspector is not bound to go from his place of his residence unless there are above 20 barrels to be inspected. The chief inspector is entitled to receive from his deputies, 3d per tierce, 2 1-2 per bbl. and 1 1-2 for each half barrel inspected by them. There are very many minute regulations contained in these acts respecting the quality of the fish, the mode of inspecting and other forms to be pursued, and the fines and penalties imposed. Our plan will hardly admit us to detail them, and as yet the system is an experiment, and will probably undergo many further modifications in minor points. It may be added however, that these acts point out very particularly the description of staves and barrels to be used in the fishery, and the quantity as well as quality of the fish in each cask is the subject of special regulation.

(*Butter.* An inspection of this article is established for the county of Cumberland, by 42, G. 3. c. 2. 1802. 1, P. L. 456. The inspectors in each township, are to be sworn. They receive 3d per firkin for inspecting, and are liable to 40s. fine for refusing to act, and a fine of ten shillings is incurred, on every firkin sent out of the county not properly inspected.)

2. *Beef and Pork.** By the act of 1794. 34, G. 3. c. 9. 1, P. L. 336. Inspectors and repackers of beef and pork, intended for exportation in each township, are annually to be appointed by the grand jury and sessions of the county. The act prescribes their oath of office. It regulates the

* For weighing cattle sold to Butchers, see "weights and measures."

description of barrels to be used. Fixes the qualities and quantity of the article. The penalty on exporting the article without inspection is 40s. per barrel on the owner and 20s. per barrel on the shipmaster. For shifting it after inspection, £50. For misconduct, penalty on the inspector, £50. For obstructing an inspector or a constable in searching a vessel for uninspected articles £50.—Shipstores are exempted but must not exceed 2000 lb. gross weight in each vessel. Suits under this act are to be brought in supreme court, or inferior court of common pleas. The fees allowed the inspectors are for a barrel 1s. half barrel 7 1-2; for a new hoop 2d. for pickling &c. bbl. 7 1-2; 1-2 bbl. 5d, the owners finding salt.

This act was made perpetual by act of 1807. 48, G. 3. c. 23. 2, P. L. 23. but was repealed and re-enacted nearly *verbatim*, by act 1830. 11, G. 4. c. 6.

3. *Grain, Bread, Biscuit and Flour.* The inspectors are allowed 4s. per 100 bushels, for measuring of all kinds of grain, except oats, and for these 2s. The specific gravity of grain, each kind is pointed out, and if it does not come up to the standard, it is to be rejected. The fees are to be paid half by the seller and half by the buyer. By consent of the parties, the difference from the standard either under or over, may be made up to meet the weight prescribed by adding or subtracting from the quantity; 1s. per bushel fine is imposed on grain exported which is under the standard weight, act of 1792. 32, G. 3. c. 4. 1, P. L. 292.—56, G. 3, 1816, c. 4, 2, P. L. 199. Measurers are subjected to fines for negligence, or for undertaking to survey the delivery from on board more than one vessel at a time.

By the 29, G. 3. 1789, c. 10, 1 P. L. 273, all kinds of flour and meal shall be sold, bartered or exchanged by weight only, and a rounded stick must be used to strike the measure of meal or grain, and all flour, &c. for export

or sale, by act of 1796, 36, G. 3, c. 8, s. 16. 1, P. L. 377. By 3, G. 3. 1763. c. 3. 1, P. L. 87. all flour, biscuit or ship bread disposed of except by weight, are forfeited and a penalty in addition of 20s per cwt. incurred, to be recovered on oath of one witness, before 2 justices of peace of the county. The forfeited articles go to the poor of the place and the penalties to the informer; prosecution must be brought within ten days.—An oath to be taken by inspectors of flour is given in 1, P. L. 377.

The assize of bread is regulated by the act of 1796, 36, G. 3, c. 8. 1, P. L. 371; made perpetual by act of 1807. 48, G. 3, c. 22. 2, P. L. 22. By this law whenever the price of flour varies 1s. in the cwt. from that at which the preceding rate was established, the sessions, general or special, are authorized to fix the weight of the different kinds of bread according to a table given in the act which is calculated to settle the just allowance for the baking of the bread. The qualities of bread allowed to be made, are settled in the act, and no others are suffered to be sold under penalty of from 5s. to 20s.

To enable the justices to set the assize, it is made incumbent on the clerks of the market, if directed, to notify the prices of flour and meal, from time to time, to the sessions. The book in which the returns and entries are kept of the prices at which sales are effected, is to be open to the inspection of all bakers, in order that they may object to the entries when incorrect. Penalties between 40s. and 60s. are fixed on bakers, who put any improper ingredients or musty flour into their loaves, or otherwise deviate from the regular mode of making good bread. If journeymen offend in this respect their fine is from 20s. to 40s. and in either case the parties, if they do not pay the fine, on conviction before one justice may be imprisoned in the house of correction from 7 to 14 days, and the offenders names are directed to be published in the newspapers.

Deficient bread sold or exposed for sale by the baker, exposes him to a penalty of from 1s. to 5s. for each ounce wanting on every loaf. If the deficiency be less than an ounce, then the fine is from 6d. to 2s. 6d. per loaf. The weighing is to take place within 24 hours after it is baked, to make the baker liable, and he is excused when unavoidable accident or the tricks of others cause his bread to be deficient.

Bakers are bound to mark all their bread with their own christian and surnames, and the initial letters of the grain of which it is made, in Roman characters under a fine of from 5s. to 20s. recoverable before one or more justices. —The clerks of the market are bound to pay a weekly visit to bakers shops. They as well as justices and constables having justices' warrants, are authorized in the day time to enter any baker's premises or those of persons who sell bread, and to weigh and inspect bread, and seize all that is in any way bad or deficient, and the penalty for obstructing or opposing such search is from 20s. to 40.— If the baker can prove the defect for which he is fined, to have been caused by the wilful neglect or default of his journeyman or servant, a justice of peace may order the offender to make a reasonable compensation to his employer, and if he fail to do so, may commit him to the house of correction for a month. Any one justice may adjudge on offences against the act, but an appeal is given in all cases to the Quarter Sessions. In prosecutions against persons who have acted in pursuance of this law, the defendants if successful are entitled to treble costs; and all prosecutions for violation of the act must be brought within three days.

B. Materials for Building.

1. *Lime.* Every hogshead of lime is directed to contain "8 Winchester bushels heaped, at the least, or 96

gallons," and 6d. per hogshead is allowed for inspection. 1792. 32, G. 3. c. 4. sec. 6. 1, P. L. 292. 1816. 56, G. 3. c. 21. sec. 4. 2, P. L. 210.

2. *Bricks.* These are directed to be of two sizes, the larger 9 inches long, 4 3-8 wide and 2 1-2 thick. The smaller 8 1-4 long, 4 wide and 2 thick. Bricks of other dimensions to be seized by inspectors, unless sold by their real size stated to the purchaser. If bad in any other respect they are to be seized. *Lime* of bad quality is to be seized, and when a hogshead is deficient in quantity, 10s. penalty, per bushel deficient, is incurred, and the hogshead also forfeited, and is to be destroyed. The inspectors are allowed 9d. per 1000 bricks for their service, and are liable to £3 penalty for refusing to inspect lime or bricks.

3. *Free Stone.* This article when sold is to be inspected by the inspectors of lime and bricks. Their allowance is on flag stones 9d. per ton—on other free stone 6d. per ton, to be paid by the owner or seller. Acts of 1792 & 1816, last referred to.

4. *Lumber.* The inspectors or surveyors of lumber are to forfeit the full value of any lumber, shingles or clap boards, which they pass, if it should be unmerchantable. 29, G. 3. c. 11. sec. 6. 1, P. L. 273. Boards must be one inch thick, shingles 18 inches long, 4 broad, and 1-2 inch thick at the thick end, clap boards 5 inches broad, 1-2 inch thick at the back, and 4 feet 4 inches long; all timber and lumber, plank, shingles, clap boards &c. must be inspected when offered for sale or exportation, and measured, if the surveyor think necessary, making allowance for defects, the seller is to pay the officer 4d. per 1000 feet for viewing, and 6d. more per 1000 feet, if measured, and marked, and 4d. per mile for travel. All lumber, boards, &c. sold or shipped for exportation without due inspection is forfeited, (or the value) by the seller or shipper; shingles

deficient in number to be forfeited, not of the legal dimensions are to be burnt. The officers may detain a sufficient part of the articles inspected to pay their fees, if not paid to them at inspection. An oath of office is prescribed in the act. 1762. 2, G. 3, c. 8. 1, P. L. 82.

5. *Timber.* By the act 15, G. 3. c. 1. 1775. 1, P. L. 193. The Inhabitants of Cape Breton, and all persons engaged in fishery may cut timber for fuel and fishery off the reserved lands of the crown, and on ungranted lands in general. The act of 1814, 54, G. 3. c. 16. 2, P. L. 124, directs all ton timber exported, to be strait lined and well squared without offsets or joints and square butted at both ends, square edged and free from all marks of scoring, rots, splits or worm holes which may be detrimental. Spruce or pine must be at least 16 feet in length. Birch or other hardwood at least 10 feet, all ton timber must be at least 10 inches square, and if not above 16 feet long it must be of equal bigness at both ends. A surveyor passing insufficient ton timber is to forfeit £10. The shipper forfeits £20. Prosecution to be in anycourt of record. The surveyor is allowed 3d per ton for survey, and 4d per mile travel, he is to measure ton timber by the girth, and to take one quarter of the girth for the side of the square. Contracts for timber for exportation are to be considered as made for merchantable timber according to the act, and unless specially agreed for otherwise, no person is bound to take any other kind.

By act of 1826, 7, G. 4, c. 17, 3 P. L. 262. The surveyor is to mark each stick with the number of square feet it contains in figures, the mark of the purchaser and the initials of the officer. He is also to deliver the purchaser, a bill of survey, specifying the number, contents and quality of each stick inspected. A fine of 5 to 20s. is imposed on any person defacing the marks of any inspected stick of ton timber, without the permission of the owner, recoverable before one justice.

C. *Articles used for Fuel.*

1. *Coal.* For measuring coal 6d per chaldron, is allowed the officers from the seller. If delivered without being measured by the proper officer, the seller forfeits the article or its value to the poor of the township, by act of 1816. 56. G. 3, c. 4, sec. 5 and 7, 2 P. L. 200. A measurer shall not undertake to attend at more than one vessel at a time, under 40s. penalty.—Sec. 6.

2. *Cordwood.* This must measure 4 feet in length accounting half the carf. The pile is to be 4 feet high, and 8 feet long, and the whole must be of hardwood.

If sold and delivered before it is surveyed, the seller forfeits the article or its value, by act of 2, G. 3, c. 8, sec. 14, 1762, 1 P. L. 84. All short sticks are also forfeited to the poor. All crooked or rotten sticks must be piled and sold separately or forfeited. The surveyor receives from the seller 4d per cord, act. 1816, 56, G. 3, c. 4, 2 P. L. 199, 200.

Miscellaneous.

1. *Hides.* By act of 1761, 1, G. 3. c. 12. 1, P. L. 73. Raw hides of neat cattle and calves, and sheep skins are forbidden to be exported, unless to Great Britain, and the master of the ship taking them on board, must give security in £100 to that effect. Penalties to double and treble the value, are imposed on masters and shippers, violating this act. But by act of 1770, 10, G. 3, c. 9. 1, P. L. 162, whenever the price shall be 3d. per lb. or under, they may be exported to any other colony of the British crown. —Hides must be inspected by the searchers and sealers of leather, who are to make allowance for flaws. Butchers and tanners are liable to 20s. for neglecting to call on these officers. The allowance is 3d. for a hide, 1d. for a calf or sheep skin, and 3d. per mile travel, to be paid by the seller.—Act of 1779. 19, G. 3. c. 3. 1, P. L. 214.

2. *Leather.*—All leather dressed, tanned or curried in this province or coming from an adjacent colony, must not be

sold or exposed to sale, until surveyed, stamped and marked, under 20s. fine for each hide and 5s. for each calf skin. The surveyor is to stamp the article and put the initial of the town where it is made on it. He is also to mark the weight on each hide. His fees are 3d for a hide, and 1d for a calf skin. Counterfeiting the mark incurs £10 penalty recoverable before two justices.—Act of 1768, 8 & 9, G. 3. c. 4. 1, P. L. 148.

Weights and Measures.

An act of the province passed in 1758, 32, G. 2, c. 21. 1 P. L. 32, established the standard of weights and measures in the province, to be "according to the standard* of the Exchequer of England." These were directed to be procured by the Treasurer of the Province, to regulate others by. Long, liquid and dry measures, and weights, were all to follow this regulation. The clerks of the market of each town are to procure a set of weights in conformity to these, and to keep them as assay weights marked with the king's name.

Quarterly and oftener, if they see cause, the clerks of the market are to inspect the weights and measures, by visiting every place where they are publicly used. These must be branded or stamped with the initial letter of the town, by those officers. All unmarked weights and measures found in the use of buying and selling become forfeited to the use of the clerks; and a forfeiture of ten pounds recoverable in any court of record, is incurred by using weights or measures under the standard.

Hay.—The act of 1758, 33, G. 2, c. 6. 1, P. L. 50, *enacts that no provision or goods of any kind shall be sold by steelyards, except Hay*, under penalty of 20s. for each offence recoverable before one justice of peace. The same

* This of course means the standard of the English Exchequer in 1758.

act extends the power of inspection, to weights and measures used on board vessels at the wharves, or in any harbor. —The act of 1767, 7, G. 3, c. 4, 1 P. L. 126, directs the fines under the foregoing acts to be divided, half to the clerks of the market or others prosecuting, and half to the poor of the township.

The act of 1777, 17, G. 3. c. 1, sec. 2. 1 P. L. 204, gives to the surveyors and weighers of Hay in each township, 1d per cwt. for viewing and weighing hay, and 4d. per mile travel if they have to go more than one mile. The seller is to pay these charges.

Weighing Beef.

The act of 1829, 10, G. 4. c. 17, directs the grand jury to present at the first sessions annually in each county, 5 persons for each township, out of whom the sessions are to appoint two or more, to be inspectors and weighers of beef. Sec. 2, when cattle are sold to the butcher, by the pound, or by the cwt. and slaughtered, one of the inspectors, named by the seller, if required, shall be employed within 24 hours after the same is killed, to inspect and weigh the beef of such cattle, who shall ascertain the just and true weight thereof, by weights duly assayed and stamped according to law ; and also by deducting, at his discretion, what he shall deem a fair allowance for any bruises, and adding to the several quarters an allowance if in his opinion any part has been improperly trimmed off and reduced in weight by the purchaser.

Sec. 3. The Inspector is to receive from the seller, 9d per carcase, when one or two only are inspected at one time ;—if 3 or more at a time, 6d each.

Sec. 4, Imposes 20s. penalty per head, on Butchers not employing inspectors for all cattle they kill, recoverable before any one justice of peace. Half to the prosecutor, half to the poor of the township. Sec. 5. Act temporary for 3 years.

Coin.—The Provincial laws on this head in force, are the act of 1787. 28, G. 3. c. 9. s. 1. 1, P. L. 258. which imposed a prohibition on the circulation of any *copper coin*, except tower half-pence, or other copper coin legally current in Great Britain or Ireland, and the person circulating base copper coin forfeits it, and also double its nominal value, to the poor of the township, recoverable before two justices of peace;—and the act of 1817. 57, G. 3. c. 3, P. L. 3. authorizing a provincial coinage of copper money. The criminal laws of the province make it high treason to counterfeit the king's coin. Infamous punishments and mutilation are inflicted, on the counterfeiting foreign coins or those of the province. These will be particularized in a different place.

Provincial Notes.—These are issued from the Treasury under particular acts, but they have not been made a legal tender. The punishments for forgery of these and other paper money or securities will be hereafter noticed.

Bank Notes.—To prevent the over issue of paper money, the act of 58, G. 3, c. 27, 1818. 3, P. L. 34, forbids the issue of bills or notes, by any corporate body, for circulation as money, and makes the charter of such company incorporated void, *ipso facto*, on their issuing such notes.

The act of 1820, 1, 1 & 2, G. 4, c. 38. 3, P. L. 116, makes all negotiable notes or bills void, if they are for any sum less than 26s each, imposing 20s penalty on each note, so issued, recoverable before two justices, half to informer and half to poor of the place.

Hawkers and Pedlars.

An act of 1782. 22, G. 3. c. 1. 1 P. L. 225. Pedlars are directed to take out licenses in each county or district where they travel. Those are to be paid for half yearly,

and to be issued in Halifax, by the clerk of licenses, in other counties and districts by the clerk of the peace, with the approbation of three or more justices of the peace. These are issued in the same manner with licenses for retailing liquors, and the same kind of bond is taken for security. The duty payable is as follows, for a foot pedlar £3,—with one horse or other beast of burthen £6,—and two pounds for each additional beast. These sums are to be paid for the half years license.

Any person selling goods or exposing them to sale, without such license, (except in the place of his abode, or at a public fair or market) is to forfeit all the goods he has exposed to sale. Justices, sheriffs, under sheriffs and constables, are directed particularly in the act to see to its observance. The sales of fish, fruits and victuals, of manufactured articles sold by the makers, their children, apprentices and servants, are exempted from the operation of this law, and tinkers, coopers, glaziers, plumbers, harness menders, and other persons who mend kettles, tubs, household goods, or harness, travelling about with the materials of their work, are protected by express words. —The act of 1815, 55, G. 3. c. 8. 2, P. L. 149. directs the proceeds of the act above to be paid into the county treasurer, in each county and district, and to be added to the license fund and to be disposed of accordingly by the grand juries and sessions.

Licensed Houses.

A Fine of £10 for each offence is imposed on persons selling liquors by retail without license, recoverable before two justices of the peace, by act of 1799. 39, G. 3. c. 13. 1, P. L. 411, 416. continued by different acts. The same act imposes a similar fine on persons hanging out a sign, stating that they are authorized to sell liquor by license, if they are not licensed; and a fine of £5 on those who take

out such a license and neglect to have such a sign. The penalty is the same for selling liquor at two places under one license, as for selling without license. The justices in the spring sessions, are annually to prepare a list of persons to receive licenses—act of 1815. 55, G. 3. c. 17. sec. 2. 2, P. L. 158 & 5th sec. of the act of 1799. 1, P. L. 412. Each person licensed must enter into a recognizance with one good security, in the penalty of £50 for obedience to all laws respecting licensed houses,—to keep good order in his tavern, to prevent gaming in it, and to secure the payment of their license duties within ten days after they become due. For this bond and the license, the clerk of licenses receives 5s. and the clerk of the peace 2s. 6d. by act of 1801. 41, G. 3. c. 12. 1, P. L. 445. & 5th sec. of act 1799. 1, P. L. 411. for taking a minute of the bond in the sessions book, Tavern keepers and others taking out licenses to retail, are not allowed to sell goods or merchandize under £20 penalty, by act of 1799. 19th sec. 1, P. L. 416. Shop keepers may obtain a shop license by which they can sell liquors in quantities, not less than one quart, (and in Halifax town and suburbs, not less than one gill.)*

The duty on the retail license is, in Halifax

Peninsula	- - - - -	£6	per an.
	Elsewhere - -	3	do.
On shop licenses in	Halifax township, -	4	do.
	Elsewhere, - -	2	do.

* The act of 1828. 9, G. 4. c. 17. allows any one having a shop license, to retail all kinds of liquors in any quantity whatsoever, and raises the duty on shop licenses throughout the province, to £6 per annum. The act of 1830. 1, Wm. 4. c. 11. imposes on every kind of license to sell liquors, *within the town and peninsula of Halifax, £4 additional duty.* It also raises the fee of the clerk of the peace at Halifax, for his attendance on taking a license bond from 2s. 6d. to 5s. I believe the house now sitting is about making some further change in the duty (March 1832.) These acts appear much confused and obscured by frequent changes.

These duties are payable in quarterly payments, three months in advance; each quarter being paid for at its commencement. The sessions are also authorized to grant licenses gratis, to persons living on roads remote, and little frequented, to encourage them to afford entertainment to the traveller. Sec. 6 and 9, 39, G. 3, c. 13, 1 P. L. 412, 414, Anno 1799. By the 9th section of same act, persons keeping riotous houses or otherwise abusing their licence are to forfeit it, may be bound over to good behavior, and their bonds are forfeited; and by act of 1815. 55, G. 3, c. 17, sec. 3. 2 P. L. 158, any two justices on sworn evidence may suspend the license of the person complained of, who may however appeal to the sessions, but the suspension remains in force until the appeal is determined. By the 8th section of the act of 1799. Licenses for retail, not being in the town of Halifax, must not be granted except to innkeepers, and they must set up a sign with their names and a statement that entertainment may there be had for man and horse, they are bound also to have two spare beds, good food and drink, and stables, hay and provender, the sessions upon sworn evidence of default in these matters, may take away licenses as forfeited. They who retail liquors must all have a copy of the 5 and 9 sections of the act of 1799, which forbid gaming, riot, sabbath breaking, &c. posted up in their tavern or shop, under pain of forfeiting their license. Those who have shop licenses are not to suffer the liquors they sell to be drank in their shop under £10 penalty. Merchants may sell liquors, not less than one gallon at a time, without licenses. Witnesses summoned to prove offences against the act, forfeit £10 by neglecting to attend. Half the penalties go to the informer for breaches or the act of 1799, the other half the clerk of licenses receives and accounts for with the duties, having 7 1-2 per cent for collection. The clerk of licenses forfeits double the amount, if he neglects to account and pay over his receipts. The clerk of licenses is empower-

ed to visit licensed houses at all seasons, he is to prosecute all offenders against these laws, and he is sworn to execute them. Any person interrupting or assaulting this officer while he is visiting such a place, is made liable to indictment, fine and imprisonment. If the quarter dues for licenses are not paid in ten days after they become due, the clerk is to prosecute and recover them before one justice of peace, from the party or his sureties. The act of 1799, is directed to be publicly read by the clerk of the peace, on the first day of the spring sessions in every county. The foregoing acts are all continued from year to year.

Forestalling. The acts of the province on this subject were suspended, by 7, G. 4. c. 20, & 21, 1826. 3, P. L. 263, 264, for five years.

32, G. 2, c. 10, 1, P. L.	9,	1758,	Perpetual.
6, G. 3, c. 6,	119,	1766,	
18, G. 3, c. 5,	210,	1778,	
38, G. 3, c. 4,	395,	1798,	Annual.
58, G. 3, c. 30, 3, P. L.	35,	1818,	
4, G. 4, c. 11,	183,	1824,	
6, G. 4, c. 32,	216,	1825,	

And the suspension has been renewed for five years more, by act 1830. 1, W. 4. c. 9 & 10.

Carriages.—The sessions in each county, are in March and September, in every year, to regulate the fares and rates of carriages for the county. This is to be posted up in the most public places. Any person demanding or receiving larger fares, is subject to 20s. penalty, recoverable before one justice. Half the fine goes to the prosecutor, the other half to be laid out on the streets of the town* where the offence is committed.—Act of 1759, 33, G. 2, c. 11, 1, P L. 52. The foregoing extended universally at first, but an act of 1809, established a system of licenses for

* The expression "town" for what we now call a township, that is, a certain territorial division of a county, is frequent in early acts of our Legislature, apparently adopted from the laws of Massachusetts.

truckmen within the town and suburbs of Halifax, for which see the chapters on the local laws.

Bills of Exchange.—On bills of exchange drawn by persons residing in Nova Scotia, upon persons in Europe, that are sent back protested, 10 per cent damages, and 6 per cent per annum interest, is allowed, reckoning the interest from the date of the protest to the time of payment. When drawn here on persons in the other colonies, 5 per cent damages and 6 per cent, per annum interest. When drawn on any part of America, not part of his Majesty's dominions, 5 p. c. damages, and 6 p. c. interest; when drawn by persons in the province, on other persons also in the province, six per cent interest is allowed. Acts of 1760, 34, G. 2, c. 2. 1, P. L, 57. 1807, 48, G. 3, c. 20. 2, P. L. 22.

Interest.—Interest is forbidden to be taken at a greater rate than 6 per cent, per annum, on the loan of monies, wares, merchandizes or other commodities whatsoever, all contracts at a higher rate are made void. Persons taking a a larger rate are liable to a forfeiture of treble the capital sum, half to his Majesty for the use of the province, and the other half to the prosecutor, recoverable in any court of record, in the same county where the offence is committed, an exception is made in favor of hypothecations or bottomry bonds, and another in favor of hired cattle, swine and grain, provided the lenders take the risk of accident and death. All prosecutions under these laws must be brought within 12 months after the offence, and an appeal or writ of error is allowed from the Inferior to the Supreme Court in such cases.—Act of 1770, 10, G. 3, c. 5, 1, P. L. 160. 1774, 14 & 15, G. 3, c. 1. 1, P. L. 183.

Limitation of Actions.—Though the subject of this title will be more fully reviewed in a subsequent place, it may be well to mention here the chief features of the statute of the province, as applicable to accounts, promissory notes,

bills and other transactions of ordinary business. The provincial act 1758, 32, G. 2, c. 24, sec. 4. 1, P. L. 35. directs that all actions of trespass on the case, shall be brought within six years after cause of action. The 8th and 9th secs. make exceptions in favor of minors, married women, persons *non compotes mentis*, prisoners and persons living out of the province, provided they were in that situation when the cause of action accrued, but they must commence their suit within six years after the disability is removed, and it is enacted, thereby, that if the defendant be out of the country when the cause of action accrues, the action may be brought at any time within six years after his return to the country. The practical explanation of this law is, that a creditor on a book account, note of hand, bill of exchange, or under any agreement not under seal, must sue for his demand in the course of six years after the money becomes due or payable to him. The cause of action is said to 'accrue' at the earliest moment when the creditor might have demanded payment according to the terms of the transaction. The exceptions above mentioned are to be understood with this caution, that if the debtor or creditor be not in any of the excepted predicaments at the time of the debt being first due, he will not be entitled to the benefit of the exception. There are circumstances however, that may prevent the operation of this law against a debt. Thus in a book account if the parties continue to deal with each other, and there are transactions both of debit and credit from time to time, the 4th section of the statute prevents the account from running out of date while additional items are going on between the parties, so that a continual course of business may go on for very many years, and the older parts of the account though more than six years standing, will not run out of date. But if the account be settled and balanced, and the dealings cease to go on as usual, then six years only is allowed to bring the action. Again in cases of promissory

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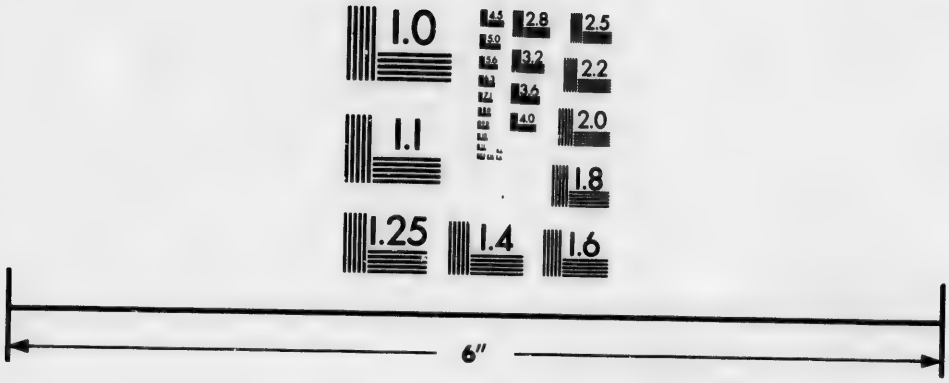

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notes, if the drawer make payments from time to time which are endorsed, when made, the note will not run out of date, unless six years have elapsed since the date of the last payment so endorsed. (This rule has been altered in England by a late statute.) There are three methods resorted to in business to prevent a note, book debt, &c. from running out of date. The first is to obtain an acknowledgment of the debt, and promise to pay it which though verbal, if proved by testimony of witnesses, will have this effect, that an action may be brought for the amount at any time within six years after the period of such acknowledgment having been made. The second method is to procure from the debtor a new note or security, bearing date when procured, in lieu of the old one, which will be capable of being sued on for the next six years. The third mode is to sue out a writ and have it served on the debtor before the six years expire, and continue it on the roll of the court afterwards, to keep the right alive. Bonds and other sealed instruments are not mentioned in the statute, but must in general be sued on within twenty years after their date or they may be presumed to have been satisfied from the lapse of time.

Privileged Debtors and Creditors.

The particular privileges of debtors and creditors being also a branch of legal practice will be more appropriately considered when the proeeedings in courts of law are described. We may remark here that persons under age are not capable of incurring any responsibility for debt except for necessary maintenance, education and clothing suitable to their station and to their circumstances. He who trusts them further obtains no legal demand against themselves, their property, or their relatives and guardians, and if they are supplied with articles of extravagance, the law views the demand in a light very unfavorable. An undertaking to pay, made after the party comes of age, will however,

make the debt legal. Petty officers, non commissioned officers, soldiers and seamen of the royal navy, are protected from arrest, for debt, whether under execution or otherwise by English acts, except for debts which they owed before they entered the service, which are above £20 sterling. The governor and lieutenant governor, the members of council and assembly in session, are protected from any arrest for debt or execution, or *mesne process*, by their privileges. Attornies at law and orther officers in constant attendance on the courts, are exempted from arrest for debt. Married women are exempted from imprisonment for debt, even for those debts they contracted before marriage, but their husbands become their substitutes in this respect. Witnesses, suitors and jurors are protected from arrests for debt while going to the place of trial, remaining there and returning home. Clergymen while performing any divine services are also not to be arrested. Arrests must not take place on the sabbath for debts. There are also privileges as to property.—The bedding, &c.—the tools of trade—the cow of a poor man are all protected from creditors by a provincial act, but they are liable for rent. Act 1817, 5, 7, G. 3, c. 25. 3, P. L. 21. All the landed estate of debtors is liable to be taken and sold for their debts unless it be previously mortgaged, or settled in some way by registered deeds. But this must be done after a judgment has been obtained against the debtor, for the law which formerly allowed the lands and goods of a debtor to be attached to answer the debt, at the commencement of a suit, has been abrogated by the act of 1824, 4 and 5 G. 4, c. 7, 3 P. L. 182, which has been continued by act of 1829, for 5 years. The only attachment before judgment being now in cases where the debtor is absent from the province, or absconds from pursuit. English creditors are favored in some respects. In the mode of transmitting proof of their claims by an English Statute, and in the case of insolvent persons who may be in their debt by provincial act of

1817, 57 G. 3, c. 1, Sec. 5, 3 P. L. 2. In the case of debtors who are absent or absconding, they may be proceeded against, if they leave property or debts due them which can be attached, which attaching is considered equivalent to personal notice to them of the suit, a sufficient time being allowed for their agents to give them notice. The creditor is in some cases prevented from taking the debtors goods in execution by the effect of the statute, 8, G. 3, c. 4, Sec. 5. 1768, 1 P. L. 137, which gives the landlord a right to the goods on his premises as far as his rent is unpaid; but this does not extend beyond the amount of one year's rent.

The foregoing sketch may suffice on these points which will be all separately noticed in their proper places. The forfeitures of vessels and cargoes, &c. which arise from the laws of the Revenue though connected with commerce, will be best arranged in some future part of this work.

BOOK I.—CHAPTER VIII.

LAWS FOR THE PRESERVATION AND IMPROVEMENT OF RELIGION AND MORALS.

Religion.—The act of 1758, 32, G. 2. c. 5, 1 P. L. 7, declared the "sacred rites and ceremonies of divine wor-" ship, according to the liturgy of the church established " by the laws of England" should be deemed the fixed form of worship in the Province. Ministers of the Church of England were required to produce testimonials from the Bishop of London, to assent to the book of common prayer, and subscribe to the orders and constitutions of the Church, and the laws established in it. On compliance with these requirements, the governor was directed to induct the minister into any parish that should make presentation of him. The governor and council were authorized to suspend and silence any other persons assuming the functions of Ministers of the Church of England. This jurisdiction of the Governor and council is supposed to be taken away by the subsequent erection of this and the adcent provinces, into an episcopate, of which Halifax is the cathedral church, and Nova Scotia the title. The second

clause of the act provided that protestant dissenters of all denominations should have free liberty of conscience, and might erect and build meeting houses for public worship and choose ministers for performing divine service according to their opinions, and contracts between their clergymen and congregations were declared valid, and all such dissenters were declared to be excused from rates or taxes for the support of the established church of England, and these privileges are all declared to extend to Roman Catholics, by act of 1827, 8, G. 4. c. 33. The five remaining sections were penal enactments against the Roman Catholic Worship, and have been since entirely repealed.*

The township of Halifax was erected into one parish under the name of St. Pauls, by act 1759. 33, G. 2. c. 3. s. 1. 1, P. L. 49, and part of it was set off into another parish by act of 1827, 8 G. 4, c. 30. under the name of St. George's The act of 1759, 33 Geo. 2, c. 10, directs the governor and council to set off new parishes on the erection of new churches, chapels, and places of worship of the English Church. Regulations were originally framed for the parish of St. Paul's, and afterwards received additions, and were made general for all parishes. The following are the acts on this subject:

1759.	33, G. 2. c. 3.	1, P. L. 49.
do.	do. 10.	52.
1760.	34, G. 2. c. 10.	62.
1767.	7 & 8, G. 3. c. 1.	129.
1812,	52, G. 3. ses. 1. c. 15.	2. P. L. 92.

Under these acts, the parishioners meet in each parish yearly on the first Monday after Easter day, and elect their two churchwardens and twelve vestrymen. Notice must be given to the parishioners previously. The churchwardens and vestry are entitled to exercise the powers of

* By 23 G. 3, c. 9 (1783) 1 P. L. 235 & (1786) 26, G. 3, c. 1, 1 P. L. 245, 7 G 4, c. 18, (1826) 3, P. L. 263, & 8. G. 4, c. 33, (1827), all penal laws of the province against Roman Catholics are entirely abrogated. See also relief bill, 1830. 11, G. 4. c. 1.

the same officers in England—and have corporate powers to hold lands, receive donations, and collect dues. Those elected to be officers must serve or pay £5 (each) fine. The parishioners by a majority of votes may at their annual meeting vote money for the support of their minister, to be levied in half yearly payments assessed according to their abilities to pay. At quarterly meetings on the first Mondays of March, June, September, and December, they may in like manner vote money for repairs of the church, and its usual furniture, ornaments &c. for salaries of organist, clerk and sexton, and clerk of vestry. The churchwardens and vestry act as assessors, and collect assessments, and three other parishioners named by the parishioners, assess those officers. If rates are not paid after a month's notice. the churchwardens may on affidavit of notice obtain a warrant of distress from one Justice of Peace to enforce payment. The parties may appeal to the next sessions, and the decision of the sessions is final. The ministers may sue the churchwardens for the monies they have received, or neglected to receive for the use of the ministers. By the act 1759. 33, G. 2, c. 2. 1. P. L. 48. Quakers are permitted to make solemn affirmation where an oath is required by law, in the following form :—

"I (A. B.) do solemly, sincerely and truly declare and affirm," which is to have the force of an oath in law, except that they are not to give evidence in criminal causes, and it has been thought that they are disqualified from acting as grand jurors, though they have sometimes sat.—They must have been of that persuasion for a year before, to entitle themselves to the privilege of this act, and if guilty of affirming falsely incur the same penalties as if they had been sworn. Many difficulties were felt by dis-

Note.—A grant from one of the early governors gives to the ministers of St. Paul's 9-10ths of the pew rent for his support, as a part of the conditions of the gift of the church and glebe.—This is registered in the registry of Deeds at Halifax.

senting congregations owing to the want of corporate powers to hold lands and manage the temporal concerns of their churches, to remedy which, an act was passed in 1828, 9, G. 4. c. 6. comprising a code of regulations on the subject of which the following is an outline. Sec. 1. Any religious society or congregation within the province, containing not less than 20 members of legal capacity to contract, may establish themselves under the act. To form their society under this act, they are to execute a deed in writing under their seals and signatures attested by two or more witnesses. This deed must be entered in a book, to be provided and kept for the purpose by the Society, and (by 2d sec.) it must be registered on the oath of the subscribing *Witnesses*, in the county or district registry where the society is established, and the registration certified in writing by the registrar on the deed. In this deed they must "declare and constitute themselves, and "each and every of them, members of a congregation "of christians, for public worship and other religious pur-"poses." It is to contain a name or designation for the society, to declare the place where it is established, and the sect of christians with whom it is connected, or chiefly assimilated. It must name two or more members of the society to be trustees, giving them a name of office, and describe by *metes* and bounds, the lands and tenements conveyed to the congregation, or to any in trust for it, or held and enjoyed by it either as the site of their "church, chapel, or place of meeting for public worship," or for places of interment, or for the residence of their pastor, or for a glebe, "or for the support and maintenance of the said "congregation and the ministers, officers and members "thereof, or in aid or support of other lawful objects "connected with such religious establishments." This deed is to contain as much of the constitution of the society as the parties think proper; "but particularly the mode "by which future members can or may be admitted into

" such congregations, and by whom the right of voting at " its meeting shall be enjoyed, and how the votes of the " members shall be ascertained and given, and the manner " in which all vacancies in the trust shall be from time to " time supplied."

Sec. 3.—This deed having been registered, all the property moveable and immoveable of the congregation as a society, and all its claims, securities, legal instruments and documents, connected with property real or personal, are entirely vested in the trustees and their successors for the use and benefit of the society, and shall be stated and considered as the property of the trustees, by their name of office in all proceedings, civil or criminal, both in law and in equity.

Sec. 4.—Authorizes the trustees to sue or defend in any actions or proceedings, civil or criminal, in courts of law or equity, where the interests of the society are concerned. The death or removal of trustees not to cause any cessation or suspension in proceedings, nor to affect the payment of expenses or damages.

Sec. 5.—Limits the possessions of such a society to £2000 per annum, in landed estate, and £10,000 capital in money, securities for money and moveables—and gives the society power to sell, let, use, apply or dispose of all their possessions as they think proper.

Sec. 6.—The congregation may meet whenever and as often as the members think proper; and by majority of votes, may adopt and alter rules for their constitution and government, choose trustees, supply vacancies in the trust or remove trustees, and generally conduct the business of the society. These meetings must be previously notified in conformity to their rules, and a chairman must be chosen at each meeting, and all the proceedings of the meeting must be duly entered in the books of the congregation,

and signed by the chairman and by the clerk of the meeting. Proof of such entry so signed, shall be deemed sufficient evidence of the proceedings and of the regularity of the meetings.

Sec. 7.—Directs members admitted, after the deed of constitution is registered, to execute it in the presence of two witnesses, before they can be considered members.

Sec. 8.—Directs land held in trust for such a society, previously to its formation under this act, to be transferred to the trustees named in conformity to this act, and vests it when so transferred by the old trustees or their survivors, or such of them as remain in the province, as fully as if all the original trustees had transferred.

Sec. 9.—The trustees under the orders of the congregation voting by majority, are empowered to grant, sell, mortgage, lease or convey real estates of the society. The instrument must be executed by the trustees in their names of office, and signed by the chairman of the meeting, at which the act was directed to be done.

Sec. 10.—The trustees are authorized to enter into written contracts with ministers, chosen by the congregation, for such salary and on such terms as shall be agreed on.

Sec. 11.—The chairman of the meeting and the trustees are to cause the contract with the minister, to be registered in the county or district registry of deeds, on the oath of *one of the subscribing witnesses*. On its being registered, the minister is to be considered as the settled incumbent.

Sec. 12.—Whenever the funds of the society in hand or disposable, are inadequate to meet the claims on the trustees, the majority by vote may empower them to assess the amount on the members and collect it. It is to be assessed and voted according to the society's rules on the subject—and the trustees may sue for the separate rate of

each member, before any court competent, suit may be brought against the member himself or against his representatives competent and liable.

Sec. 13.—This act not to affect or lessen the laws or privileges of the church of England, in this province.

The provincial act of 1830. 11, G. 4. c. 1. enacts sec. 1. that " it shall not be required of *any* of his Majesty's sub- " jects within this province, to make or subscribe the said " declaration" [viz. the " declaration against transub- " stantiation, and the declaration against transubstantia- " tion and the Invocation of saints and the sacrifice of the " Mass, as practised in the Church of Rome"]—" or either " of them as a qualification for sitting and voting in the " general assembly of this province, or for the exercise of " any office, franchise or civil right within the same."

Sec. 2.—Enacts that a roman catholic may sit in either council or assembly, on taking and subscribing the oath directed by the 2d and 3d clauses of the catholic relief bill. Imperial act 10, G. 4. (vide appendix for the oath) " instead of the oaths of allegiance, supremacy and ab- " juration."

Sec. 3.—Authorizes roman catholics to hold " all civil " and military offices and places of trust or profit, in this " province, under his Majesty, his heirs and successors, " and to exercise any other franchise or civil right, upon " taking and subscribing the said oath" &c. instead of the former oaths.

Sec. 4.—Excepts the oaths of office, which have no reference to religious tenets.

Sec. 5.—Authorizes the administration of the new oath by the same persons &c. as former oaths.

Observation of the Sabbath.

The provincial act of 1761. 1, G. 3. c. 1. 1, P. L. 64. 66. expressly forbids the exposure of goods for sale, and all buy-

ing and selling on the Lord's day is strictly prohibited, with the exception of milk and fresh fish, which may be sold on Sundays before 9 o'clock in the morning, and after 5 o'clock in the afternoon. All labor or pastime on the Lord's day is also prohibited. Every offender against the foregoing rules is liable for each offence to 10s. fine, on conviction before one justice of peace on the oath of one credible witness or upon his own view. Tavern keepers and other liquor sellers are forbidden to suffer the inhabitants of the place to spend their time in their taverns &c. or to drink therein, under penalty of 10s. for each person found there, and the parties found forfeit 5s. each. The doors of taverns &c. to be kept shut during hours of divine service. The churchwardens and constables are directed to walk through the town (of *Halifax* probably was meant) to observe and suppress disorders and apprehend offenders. They are empowered to enter public houses to search for offenders, and if denied entrance may break in; persons refusing to aid them in this respect are subject to 10s. penalty for every neglect. A penalty for non attendance on public worship for three months (unless sickness or necessity prevent,) of 10s. for every head of a family and 5s. for every child or servant, recoverable before one justice, who is empowered to cause it to be levied. All the penalties are to go to the poor of the town where the offence is committed. The convictions must be recorded by the justice, in a book kept for the purpose. Prosecutions must be brought within ten days after the offence; penalties to be levied by warrant of distress by one justice. In default of distress the offender to be committed to the county gaol, for a term not more than 48 hours, nor less than 24. This act is to be publicly read at every Quarter Sessions after the grand jury are sworn—and on the first Sunday of June and the first Sunday of December, every year, in all public places of worship in the province, immediately after divine service.

By act of 1791. 31, G. 3. c. 3. 1, P. L. 284. The service of law process on Sundays is forbidden and declared void (except in cases of treason, felony or breach of the peace,) and the party served may sue for damages as if the act had been done without any process or order whatsoever.

Morals.

Taverns and Inns.—Act of 1762. 2, G. 3. c. 1. 1, P. L. 77. Sellers of liquor giving credit in taverns, retail shops or such places, to any soldier, sailor, servant, day laborer or other person, for wine, ale or spirituous liquors mixed or unmixed, to an amount above 5s. are deprived of remedy at law, and in equity, against the purchasers, their executors or administrators. If pledges are taken for any such debt, any justice of the peace on the facts being proved to his satisfaction, is authorized to order them to be restored to the owner. The justice may compel restitution by warrant of distress, under his hand and seal, or compensation; the person taking the pledge is also subjected to a fine of 20s. to the use of the poor, and must pay the costs of prosecution. No retailer or other person is to suffer apprentices or bound servants to sit drinking in his house, or allow them to obtain liquor there, without the special order or allowance of their masters—under 20s. penalty for every offence, and the charges of prosecution, recoverable before one justice in the town or precinct, on proof to his satisfaction, to be levied by warrant of distress under his hand and seal—in case there is no distress, the justice may commit for a month to gaol or until the amount is paid; the penalty to go to the poor of the place. Travellers and boarders not to be affected by the act. It may be well under this head, to allude to the penalties imposed on persons purchasing clothing or arms from soldiers or sailors, harboring deserters from the army or navy, and enticing or assisting them to desert. These are contained

in several acts which will be particularized in the title of laws fixing the punishment of crimes. The sale of rum or other spirituous liquors by their employers to servants is forbidden by act of 1787, 28, Geo. 3, c. 6, sec. 3, 1, P. L. 255, under penalty of double the value of the article on conviction before one justice of peace, and they are prohibited from stopping wages for such a demand. The 4th section of the same act directs that all securities given by any servant or common laborer, when the whole or any part of the amount is for rum or spirituous liquors, shall be void and the party suing on them shall become *nonsuit*.

The 5th section imposes 40s. fine on a tavern keeper or retailer, buying or taking in pledge clothing, implements and tools of trade or husbandry, or household goods or furniture from any servant or common laborer. The bargain is made void, and the articles or double their value must be restored on pain of one month's imprisonment, and this act of 1787, must be hung up in all taverns and retail liquor stores under 10s a day penalty.—Fines to be sued before one or more justices.

Gaming.

The act of 1759. 33, G. 2, c. 1. 1, P. L. 46, declares all public gaming, and all public gaming tables, and lotteries, to be nuisances. All securities, personal or real, the consideration of which is wholly or partly for money won at play, or betting on the players, or for money lent to play or bet with, are annulled. In the case of securities affecting real estate or deeds, conveying it, the persons who would by law be entitled to the estate, if the grantor were actually dead, are to be entitled to the whole benefit of such deeds or securities, in lieu of the party in whose favor they are made. Any person losing by play, or betting on play, above 20s. at one sitting, within 24 hours, and paying the whole or part, may sue for the amount (whether money or goods) and recover it from the winners with

costs, by action of debt under the act, in any court of record, according to a short form prescribed in the act, within one month. If the loser does not sue in a month, any other may sue within the next month, in which case half goes to the prosecutor and half to the poor of the town or place. The parents, guardians or masters of persons under 21, may sue for them in the same manner, and recover treble the amount with costs. A penalty of five times the sum won, is imposed on persons winning by any kind of fraud in play, recoverable by private prosecution in an action. Any two or more justices of peace, may enter any public houses suspected of keeping gaming tables, and if any are found, order them to be removed in 48 hours as nuisances, on refusal or neglect they are empowered to break and prostrate the gaming tables, and to require security for good behaviour during 12 months, from the keepers of such houses, or for their appearance at the next quarter sessions to be prosecuted for their offence, on conviction to be fined or imprisoned as the court shall direct.

Charity.

Poor Laws.—The laws to afford public relief to the poor, were consolidated into one act in 1823, 4, G. 4, c. 6. 3 P. L. 149. The following are the regulations of this act. It directs the *freeholders of every township* (except Halifax which is not included in any part of this law) *and of every settlement* or place not comprehended in a township, and *containing twenty or more freeholders resident*, to hold two meetings annually if necessary, on the first Monday of April, and the first Monday of November. Twenty days before the day of meeting, the overseers of the poor are to issue their precepts to the constables of the place, who must give ten days notice of the meeting. At these *meetings* the freeholders present are first to choose a chairman, and then to vote such sums of money as they judge necessary for the support of the poor during the current year, or the half year ensuing. If the business cannot be complet-

ed on the day of meeting it may be adjourned by vote of the majority to another day, to conclude it. If the sum voted prove insufficient, the next meeting may vote a sum to cover the deficiency. If the overseers neglect to issue their precepts, they are each to forfeit £10, to be sued by the clerk of the peace or by any private person, before any court of record in the county or district. If the freeholders do not meet and make adequate provision for the poor, the sessions general or special, on application of the overseers, are empowered to amerce the place in a sum sufficient for that purpose, and to appoint five assessors in the same manner as the freeholders should otherwise do. At the freeholders meeting five of their number are to be chosen *assessors*. The assessors must be sworn, three of them are a quorum. They are to assess the inhabitants of the place according to their known estate, real or personal, to make up the sums voted. They are also to appoint the collectors of the poor rates. If they think any person cannot pay one shilling annually, they are not to assess him. If an assessor refuse to serve he is to pay 40s. fine, recoverable by the overseers, before two justices, and to be levied by distress, and another is to be appointed in his stead. No one however is to be compelled to serve as assessor, more than once in three years. *The Collector* who refuses to serve is liable to the same fine as an assessor, recoverable in the same way. The collectors are to account every quarter with the overseers, and pay over to them the amount received. If they neglect to do so, the overseers may sue for the amount in any court of record in the province. A collector neglecting to act for 30 days, after having accepted the office, forfeits £5, to be sued in the same way. They are to sue all persons not paying their rates, before any one justice of peace, to be levied by warrant of distress, and these are to be levied, notwithstanding an appeal. *The Overseers* of the poor, who are appointed as already described in the catalogue of town officers.

are each liable to £5 fine, for refusing to serve, recoverable before two justices, by the overseers who shall be in office next after such refusal. They are to be sworn to discharge their duties. They are to issue precepts for the town meetings, to receive the accounts and money from the collectors quarterly. They are to prosecute assessors or collectors refusing to serve, and also such collectors as fail to account and pay over regularly. It is their special duty to dispose of the funds received by them for the support of the poor. They are to enter all their proceedings in a book kept for the purpose, and at the expiration of their office they are to deliver this book and any balance of money in hand to their successors. Within one month after their office expires, they must render to the clerk of the peace of the county or district, an account of their receipts and expenditures, to be laid before the next sessions; and they are obliged to account on oath (if required) at the next quarter sessions after their office expires. The sessions are authorised to audit these accounts, and to pass or reject their items on reasonable grounds for adopting or rejecting them. All overseers neglecting to render their accounts to the clerk of the peace as above prescribed may be sued by him or any inhabitant of the place, for £5 each, fine, which is to be levied by warrant, under the hands and seals of two justices of peace. It is also the duty of the overseers, to complain to the sessions of the county or district, if the freeholders of their township or settlement neglect to make adequate provision by votes for the support of the poor. The overseers are also empowered to demand re-payment from any persons who have received relief, and who were at the same time possessed of or entitled to any property real or personal, and if necessary to take legal steps to recover the amount: which they are to give credit for, when recovered in their account with the township. The overseers are also directed to refund to persons who have been overrated, upon receiving an order

from the general or special sessions, to that effect. Any persons who think themselves overrated in proportion to others, may appeal from the rate, to the next general sessions or the next sessions specially held to hear those appeals, and the justices are empowered at either general or special sessions to enquire into such appeals, and decide equitably, and their order and judgment is final and binds all parties. When the sessions amerce for the support of the poor on the neglect of the freeholders, the assessors are appointed by the justices and the collectors appointed by those assessors. The assessment made under these circumstances is to be affixed in some public place in the township or settlement, three days at least, before the end of the same sessions, in order that appeals may be made and determined during the same sessions. The proceedings under this assessment in all other respects, are the same as if it had been made on a vote of the freeholders. All penalties under the poor laws go to the use of the poor of the township or settlemen.. The settlement of the poor is provided for by the following acts, 10, G. 3. c. 1. 1770. 1, P. L. 157. 43, G. 3, c. 3, 1803, 1, P. L. 469, & 57, G. 3, c. 9. 3, P. L. 9.—1817. The description of persons for whom each township or settlement is bound to provide is specifically fixed by the act of 1770. They must have been born in the place, or have served an apprenticeship in it, or must have lived in it, as hired servants for one year, next previous to their application for relief, under an agrement to serve for a whole year (the agreement is required by the act of 1817,) The children of parents who have gained a settlement.—Those are the classesof persons who are declared in the act of 1770, to be entitled to a settlement. To prevent towns from being improperly burthened several other regulations are given. The 5th section of the act of 1770, enacts that the parents, the grandfather and grandmother, the children and grand children of those in want shall be, each one, obliged to relieve and maintain

them, when poor, old, lame and impotent, at their private expense, in such manner as shall be directed by the justices in their quarter sessions for the county or district, under penalty of 5s. a week for every person so ordered to be relieved, while the order is neglected, to be recovered "in the usual manner." It is also directed that where any husband or father forsakes his wife and children, or where a widow forsakes her children, and leave behind them property real or personal, the overseers of the place are to apply to two justices of peace whose warrant signed and sealed will authorize them to seize the party's goods, and chattels, and to let out his real estate and receive the rents, and on the allowance and approbation of the quarter sessions to sell the whole or part of the personal property seized, at auction publicly, and to apply the proceeds of rents and goods to the support of the children left destitute, 6th section, act of 1770. On complaint of the overseers any two justices of peace may bind out any persons found begging or strolling about, for any term not above a year. If any person apply for relief who has not a legal settlement in the place, but belongs to some other township, he is to be required to make oath before a justice of peace of his last residence—he is to be relieved, and a copy of his affidavit certified by the justice who took it, and an account of the expence incurred in such relief to be transmitted in a reasonable time, to the overseers of the place he belongs to, who are to be charged with all expence, incurred on his account, act of 1770. 3. sec. act of 1803. 1st section. Townships or individuals thinking themselves aggrieved by any act done under the act of settlement (1770) are by the 8th section, allowed to appeal to the next Quarter Sessions, who are to decide equitably, and their judgment is to be final and binding on all parties.

Beggars and Vagrants.

The act of 1787, 28, G. 3. c. 6. sec. 6. 1, P. L. 256.

empowers any three justices of peace to examine all disorderly and beggarly persons found strolling in any part of the province, and if they are unable to shew any visible means they possess of obtaining a sober and honest livelihood, to commit them to the next jail or bridewell, and provide them an employer, and bind them by indenture in the usual form for a term not above 7 years. These indentures cannot be assigned without the approbation of three justices, and security is to be given, for not carrying such servant out of the province, if required.

The act of 1774. 14 & 15. G. 3. c. 5. 1, P. L. 186. regulates the course to be pursued with vagrants. The first clauses define the persons who are included under the provisions of the act as idle and disorderly persons, and amenable to its punishments.

1st.—Soldiers belonging to his Majesty's troops in the province, travelling or wandering in the province without a pass from the Commanding officer of their regiment or company.

2d.—Seamen or mariners belonging to any of his Majesty's ships or vessels, travelling or wandering in the province without a pass from the Commanding officer of their ship or vessel.

3d.—All idle and wandering persons, not having a pass or testimonial from some justice of the peace. In all these cases the pass is to state the place from which the individual departs, and the place of his destination.

4th.—All persons who run away and leave their wives or children upon any township.

5th.—Persons who threaten to run away and leave their families on the township.

6th.—Persons who have been legally removed by order of two justices, returning to the township without bringing a certificate from the township to which they belong.

7th.—Persons who, not having wherewith to maintain themselves, live idle and refuse to work for the usual wages.

8th. All persons going about to beg alms. Those who are included in the 4th, 5th, 6th & 7th classes are subjected to imprisonment, either in the gaol or at hard labor in the house of correction, for any period not exceeding one month, on conviction before one justice of peace, on his own view, by confession or by the oath of one credible witness. Sec. 2d.

The 3d section gives a general authority to all persons to apprehend offenders against the act and carry them before a justice. A reward of 10s is to be paid to the captor on the signed and sealed order of the justice to the county treasurer. Private persons are liable to 10s. fine recoverable before one justice, on view or evidence, for not aiding when required (or where there is no constable) in the capture of vagrants.

4th section. Justices on receiving information that vagrants are in their jurisdiction, are to issue warrants to the constables to search for and apprehend them. If any persons apprehended on such a search shall be charged before the justice or justices, who issued the warrant with being deserters from the army or navy, or as otherwise included in the eight classes of persons described in the act, or with *suspicion of felony*, though no direct proof of the suspected felony be then forthcoming:—the justice or justices are to examine the party so charged before them as to the place whence he came, his last legal settlement and his manner of livelihood. This examination is to be committed to writing, and signed by the examined and by the justice or justices, and the latter are to transmit it to the sessions next ensuing, where it is to be filed and kept on record. In case the party thus examined can make it appear to the justices at his examination, that he is not a deserter and that he has a lawful way of getting his liveli-

hood, or if he can procure some responsible housekeeper to appear to his character and give security for his appearance before such justice or justices on some future day if required, then the proceeding against him under this act appears to close; but if he cannot do either of these things, they are to commit him for a term not exceeding 14 days, and in the meanwhile to order the overseers of the poor of the place in which he was apprehended, to cause the circumstances of his apprehension to be advertised in the newspapers—specifying the place of his confinement and the time and place of his re-examination. If at the re-examination no accusation be laid against him, he is then to be discharged. Constables are bound to apprehend all vagrants, and by the 5th section, constables, jailors or other inferior public officers, not doing their duty in the execution of this act, and private persons who disturb the execution of the act, or rescue offenders apprehended under it, or assist them to escape from custody, are liable to a penalty not exceeding £5, on conviction before one justice, on the oath of one credible witness, to be levied by the justice issuing a warrant of distress. If sufficient distress cannot be found he may commit the offenders to prison or to hard labor in the house of correction, for a term not exceeding two months.

The 6th section imposes a penalty between 10s and 40s. on persons knowingly sheltering deserters or vagabonds, recoverable as the penalty in 5th section, and a month's imprisonment is imposed, where they have not goods to be distrained for the fine, but if they have been punished under the English act for sheltering deserters, they are to be free from this penalty.

Indians.

An act of 1762, 2, G. 3, c. 3, 1 P. L. 78, requires the Governor to cause the attorney general to prosecute in a summary way in any of the courts of record, all persons who wrong the Indians in their trade and dealings, and an

act of 1829, 10, G. 4, c. 29, authorises the sessions in each county and district, to make, and alter when necessary, regulations to prevent the sale of spirituous liquors to Indians, and to enforce them by penalties not exceeding 20s. for any offence. The penalties may be recovered before one justice, half to go the prosecutor and half to the *poor Indians* of the place. Offenders may be deprived of their license at the discretion of the sessions. Any two justices of peace may order any teacher of a school receiving provincial allowance, to receive and teach Indian scholars male or female gratis. Disobedience forfeits his allowance or salary from the public for that year.

Education.

1. *Common Schools.*—A temporary act of 1828. 9, G. 4. c. 2. combines many of the rules which had been previously acted upon with respect to common schools, digested into a system with some more experimental provisions. This act allotted a sum of £4000 annually for 3 years then ensuing, as bounties for common schools, and established the principles on which they were to be conducted. The governor is authorized by the first clause to appoint in each county and district, five commissioners to superintend schools. These may be removed at pleasure, and the vacancies filled by the governor.

Sec. 3.—The board of commissioners of whom three are a quorum, divide their county into as many school districts as are necessary. The board is to enter the school on their list, and to appoint one, two or three trustees to each school district, where the people engage to establish and maintain a school of fifteen or thirty children for a year, and to build or provide a school house, and keep it in repair. The trustees are incorporated to sue and to be sued in all matters relating to the school, and they are to to make engagements with the teachers.

Sec. 5.—Whenever two thirds of the rateable inhabitants of a school district, agree to be assessed for supporting a school, this binds the district.

Sec. 6.—The board of commissioners may remove trustees, and fill up vacant trusts.

Sec. 7.—All teachers of schools must be licensed by the board of the county, under penalty of £20, recoverable by the clerk of the board in the Supreme or Inferior court in the county, half to prosecutor and the other half to the board for the use of the general funds for schools in the county.

Sec. 9. The trustees are to make minute returns annually to the board of the state and progress of the school and its expences, &c. Sec. 10, which must be correct, under penalty of £20 on each trustee. Each county's share of the £4000 is specified in the act by sec. 2, and certain rules are given in sec. 11 & 12, to guide the commissioners in subdividing it into small sums, to aid each school established in conformity to the act.

Sec. 13. The clerk of the board receives 5 per cent on the amount of monies passing through his hands.

Sec. 14. The board of each county are to send a report to the secretary of the province annually, for the information of the Governor and of the Legislature.

Sec. 15. The board is also empowered to displace teachers, annul their engagements with a school, and withdraw licenses to teach. The board must take security from their clerk to account.

Sec. 16. The governor and council are directed to furnish all boards, trustees and teachers with general instructions for their guidance, which must not be repugnant to the act, and are to be issued from the secretary's office. These are the principal features of this law. Had it been permanent it might have been proper to have given all its details here in full. But many of its enactments are to be

tried and the laws on this subject have been so often and so suddenly changed, that until they acquire more stability they can hardly be considered a part of our code, (a new act on this subject is now under discussion in the assembly.) From the importance however, of the subject of education, I should take leave to recommend to all persons connected with schools, whether as commissioners, trustees or teachers, and to those magistrates and heads of families in the country,—to whom the subject is of paramount importance, to be furnished with a copy of the laws and instructions, which may from time to time be passed on this subject.

School Lands.

The act of 1766, 6 G. 3, c. 7. 1 P. L. 120, after stating that his majesty had been pleased to order that 400 acres of land in each township, should be granted to and for the use and support of schools, enacts "that the said quantity "of lands shall be vested in trustees for the said purpose, "and such trustees shall be and are hereby enabled to sue "and defend, for and on behalf of such schools, and to "improve all such lands as shall be most for the advan-"tage and benefit thereof."

Schools at Halifax for common education.

There are three of these, to each of which the school votes have generally given £100 per annum, and the temporary school act before described continues that grant. The oldest is the Acadian School set on foot in 1813, through the indefatigable zeal of *Walter Bromley*, whose name as a philanthropist and a lover of Nova-Scotia, will long be cherished. It is on the plan of Joseph Lancaster modified by Mr. Bromley, and has afforded elementary instruction of the most useful kind, to many thousands of our youth of both sexes, and its establishment marked an era of moral and intellectual change in the body of our native population, who were before most

destitute of the means of instruction, especially in the capital. The building was erected by subscription. It was followed, after an interval of some years, by the National school, on the Madras system, under the superintendance of the English church clergy, and by the Catholic school, conducted under the care of the clergy of that church in Halifax.

SCHOOLS OF A HIGHER KIND.

The colleges and grammar schools which have been endowed permanently, are established by acts of the province passed at different times.

1. *School of Halifax.*

The earliest act of this kind is that of 1780. 20, G. 3. c. 3. 1 P. L. 220. This act directed a sum of money to be employed in erecting a public school in Halifax. The sum of £1500 appears to have been raised by lottery in the town, and from the necessities of the then provincial government it was applied to different purposes, but a piece of ground and a wooden building which had been used for the meetings of the legislature, was subsequently assigned to the school in lieu of the money.* The same act endows the school permanently with £150 per annum out of the provincial treasury, of which the schoolmaster is to receive £100 and the usher £50. † It authorises the governor to name five trustees, one to be a president and the other four are called directors. They are incorporated to hold lands, &c. and authorized to make every regulation and arrangement. This act was amended in some points by a temporary act of 1811, 51, G. 3, c. 2, P. L. 62, which

* See the journals of the assembly and the older copies of the acts at first printed in volumes at that time, and not since re-printed, which are preserved in the library of the house of assembly.

† The school must exceed 40 scholars, to entitle it to the Usher's £50 by the first act, but 30 scholars is sufficient under act of 1811.

has been continued by several acts and will expire in 1832 if not renewed. By the original act the trustees were annual, but by the amended act, hold their offices during pleasure.

2. *College at Windsor.*

The next establishment in point of time is King's College, Windsor. By the act of 1789, 29, G. 3, c. 4, 1, P. L. 268, a permanent appropriation of £400 sterling, *per annum*, was made by the province, in order to establish this seminary, and a grant of £500 was made in the same act, towards the purchase of ground for its use. The following public officers were made *ex-officio*, governors of the college, viz: the governor, the lieut. governor, the bishop, the chief justice, the provincial secretary, the speaker of the house, the attorney general, and the solicitor general,—and their successors in office. They were also invested with corporate powers, under the name of the governors of King's College, Nova Scotia, and authorized to make by-laws and nominate the president and professors, to have a common seal, sue and defend actions, &c. It was directed that the president should be a clergyman of the established Church of England, a charter was afterwards obtained from the crown and statutes made. The archbishop of Canterbury, for the time being, was appointed patron by the charter, and the bishop of Nova Scotia, visitor. His majesty's government have granted L.1000 sterling a year to this institution, besides the provincial grant; and divinity, and other degrees are conferred in it. The governors or the majority of them, at any general meeting, can make statutes and by-laws, and appoint the president and professors, appoint officers and servants and fix or alter their salaries. None of the teachers, officers, &c. can be absent, unless sick, without leave from the governors, who may appoint deputy president, or deputy professors, in case of leave of absence, and appropriate part of the principal's salary to the deputy.

3. *Academy at Pictou.*

A college regulation at Windsor which has been recently repealed, required persons seeking degrees there, to subscribe to the 39 articles of the English church. As this rule operated inconveniently in some cases, in a province where the people are divided into many religious sects, the Presbyterians, who are numerous in the eastern parts of Nova Scotia, obtained in 1816, an act of the provincial legislature for founding an Academy at Pictou. By this act (56, G. 3, c. 29, 2 P. L. 217, amended by act of 1819, 59, G. 3, c. 15, 3 P. L. 54.) twelve individuals of that persuasion were incorporated by the name of "Trustees of the Pictou Academy," vacancies in their number to be filled up by the trustees, subject to the *veto* of the governor. The trustees to be either belonging to the English church or the Scotch Presbyterian church, and the teachers to be under the same restriction. The rules and by-laws to be made by the trustees, subject to the *veto* of the governor. This institution which was very popular at its outset, appearing to be a relief to tender consciences, received large sums from public subscription, and for eleven years obtained annually from the votes of the legislature a sum of about L.400. It was carried on as a college, lectures in divinity given, and the education (to the pupils) was almost entirely gratuitous. The mode in which it was conducted gave rise at length to much controversy, and the trustees having refused to place it under more direct control of the provincial government, his majesty's council have for some time negatived all applications for money in its favor.*

4. *College at Halifax*

Under the administration of earl Dalhousie, a project was entered into of establishing a college in the metropolis, modelled after the university of Edinburgh, in order

* An act has passed 1832, settling this affair. See appendix.

that the youth of the town intended for the higher walks of life might attend lectures, without the necessity of college residence, or absence from parental superintendance. A sum of L.9750 currency belonging to the crown was given by his late majesty Geo. 4, towards the undertaking, £2000 was granted by the province, to which a loan of £5000 from the provincial treasury for 5 years without interest was afterwards added.* Of these sums. L5000 was invested in the purchase of L.8289 9 6—3, P. C. Consols for the use of the college, and the residue being L.11750 was expended in the erection of the building, the provincial government having given up a large space used before as a parade, in the centre of the town, and containing above an acre of land which was granted to the college. The act of incorporation was in 1820, 1821, 1 & 2, G. 4. c. 39, 3, P. L. 117. The act made the following public officers for the time being, governors *ex-officio*, viz: The governor general of his majesty's North American dominions, the lieutenant governor of Nova-Scotia, the bishop of Nova-Scotia, the chief justice and president of council, the treasurer, the speaker of the house, and the president of the college itself. The college was to consist of chairs for classical learning, for natural philosophy, and for moral science. To these three, the governors might add at their discretion; the governors have power to make rules, and his majesty is authorized to name a *visitor* from time to time. Owing to causes not thoroughly understood, this institution has never gone into operation.

5. *Academy at Annapolis.*

The act of 1828. 9, G. 4. c. 11. in force for five years, authorizes the governor to appoint three trustees, to confirm by-laws, give instructions, and replace vacancies, and exercise all the powers of a *visitor*. (There was for several years a law, granting in each county, £100 a year

* See act of 1823. 4, G. 4. c. 7. 3, P. L. 153.

for a grammar school, but it was found to be then a premature measure, and was in consequence abandoned.)

Addenda to Chapter on Education.

Common Schools.—By the act of 1828, there was granted by sec. 2. the sum of L.4000 a year, for three years, to be paid to the governor for the use of common schools, divided thus: Districts—of Halifax, L.200; Colchester, L.333; Pictou, L.356; Counties of Annapolis, L.390; King's, L.366; Hants, L.333; Shelburne L.366; Queen's, L.266; Lunenburgh, L.360; Sydney, L351; Cumberland L.266; Cape Breton, L.413; besides by sec. 17, L.100 each to three schools in Halifax for common education.

Sec. 9.—At the end of each year, the trustees of each school are to make a return to the commissioners of the county or district, of the number, names and ages of the scholars,—their progress in education; the amount and particulars of the expenditure of the school, the amount of the master's salary, and the manner in which it is paid, and that he really and *bona fide* receives the benefit of the provincial allowance, and that the engagements made to the board by the inhabitants have been fulfilled; and they are also to send the board a certificate from the teachers, that the salary stated is real, and not nominal or collusive.

Sec. 11.—Directs each county or district's general sum to be subdivided thus: L.50 to help inhabitants to obtain temporary teaching, (who cannot keep up a school of 15 scholars), under regulations to be made by the commissioners. The rest of the money the commissioners are to divide among the schools entered on their list, under sec. 4th, according to their direction. Provided no one school of 30 scholars or more shall receive in the year above L.20 and no school of 15 to 30 scholars more than L.15. Provided always, that schools receiving the allowance are to

teach, wholly or in part, as many poor scholars *gratis* as the board of commissioners direct. Where the board think a populous settlement able to support its school without aid, no allowance is to be given, except for poor scholars, which is not to exceed the rate of 20s. each, or £10 in all for any one such school. Sec. 18. The commissioners are responsible for the money entrusted to them, and they are to take security from the clerk of their board—who by Sec. 13, they have power to appoint. This clerk receives and pays all the monies. (For alterations made 1832, see appendix.)

School at Halifax.

The amending temporary act of 1811. 51, G. 3. c. 2. 2, P. L. 62. Sec. 1, empowers the trustees to send 10 free scholars to that school, to receive such education as the trustees direct; they are to be poor.

Sec. 2.—Authorizes the salaries to be drawn for by the governor, quarterly out of the treasury.

Sec. 3.—Trustees hold office during the governor's pleasure

Sec. 4.—Incorporates them under the name of "the "trustees and directors of the public school in Halifax,"—with power to sue or defend suits, accept and hold grants of lands, money, stock or other property, for the use of the school.

Sec. 5.—Authorizes them to fill up the vacancy of the master's place. The master must be or become a member of "some religious protestant congregation in Halifax," and be licensed to teach according to law.

Sec. 6.—If the master misbehave, the trustees are to report him to the governor, who is empowered to dismiss him, if satisfied of the justice of the complaint.

BOOK I.—CHAPTER IX.

LAWS FOR THE PRESERVATION OF HEALTH AND TO REGULATE AMUSEMENTS.

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1. *Physic and Surgery.*—The act of 1828. 9, G. 4. c. 5 expressly prohibits unqualified persons from claiming or taking any compensation for medical or surgical services. By this act all persons having a diploma, or testimonial from a regular medical college or institution, are qualified, and others licensed by the governor on examination by judges appointed by him. Military and naval medical men are exempt from the operation of the act, and by act of 1829. 10, G. 4. c. 10. persons who had been regularly settled in practice in any part of the province, for seven years before the act of 1828, are also exempted.

Quarantine.

2. *Contagious Distempers.*—The first law passed on this subject is that of 1761. 1, G. 3. c. 6. 1, P. L. 68. which directed that vessels having infected persons on board coming into Halifax harbor should anchor two miles below the town, and hoist an ensign with

the union downwards, at the main topmast head, and that the master should not permit any of his crew or passengers to land. Within 24 hours he was to notify the Governor of the number and condition of the sick on board, and conform to the orders of the Governor for performing ing quarantine, for airing and cleansing the passengers, vessel and goods, and for removing the infected and sick persons out of the ship. Before removing the sick on shore, the master was directed to give security for the expense attending their maintenance and cure; and he was subjected to a penalty not to exceed £100, for any breach of the act, recoverable in any Court of Record. In cases of vessels arriving in other ports of the province, the nearest justice of the peace (or justices) is directed by the same act to restrain all intercourse between the vessel and the shore, until he receives orders from the governor, whom he is to notify of the facts, and he is authorized by warrant to the constables of the place to enforce his authority. In consequence of the fatal prevalence of the yellow fever in the United States, the act of 1799. 39, Geo. 3. c. 3. 1, P. L. 399—404. passed, enlarging and defining the rules of quarantine.—Its first section empowers the Governor and Council to declare quarantine to extend to vessels coming from such places or countries as they deem infected; and to make regulations for their performing it.

Sec. 2.—Empowers the Governor to appoint health officers for such places in the Province as he thinks proper. These officers are empowered to speak such ships as arrive during the existence of quarantine. Force civil and even military is authorised, to compel vessels to perform quarantine. Masters coming from infected places, or having infected persons on board, concealing the facts, are made liable to twelve months imprisonment. Sec. 3 imposes £100 penalty on the master or person in charge

of the ship, going on shore, or suffering any one to quit the ship, without license from the proper authorities, or neglecting to carry the vessel to the place of quarantine appointed for her. Persons so quitting the ship may be, (by any one) forced to return, and each person so improperly landing is liable to £50 penalty, and six months imprisonment. The penalty recoverable in any court of record, and bail may be demanded for it on the writ.

Sec. 4—Directs how quarantine is to be performed when necessary. The duty devolves in this respect on the neighboring justices of peace and overseers of the poor, who are to act in conformity to the orders of the governor and council; and the treasury of the province is made answerable for expenses when infected persons are unable to refund. The act also imposes £50 fine and six months imprisonment on persons escaping from the places on shore appointed; and on persons without authority visiting the infected, and returning or attempting to return; officers neglecting their duty, forfeit office, and also are fined £50. Persons embezzling goods under quarantine, are made liable to treble damages and full costs. Infected clothing or furniture may be burnt or purified. The persons and property under quarantine may be freed, on certificate of performance by the health officer, who is made liable to *capital punishment* if he "knowingly" give a false certificate. Persons concealing or clandestinely taking letters or goods from quarantine, are also made liable to *capital punishment*. Master of vessel is bound by 14 sec. to report if there be any ground of suspecting contagion, and to obey all the regulations of quarantine, under fine not exceeding £200 for each offence, Health officers are to be paid out of the Province treasury for their actual services.

Separation and maintenance of sick in contagious disorders.

The act of 1775. 15 and 16, G. 3. c. 2. 1, P. L. 157.

authorizes two or more justices of the peace, and the overseers of the poor, to take charge of infected persons, and those who come from suspected places, and to separate them from neighbors, to prevent the spreading of the contagion, and to maintain them, &c. and also points out the mode of defraying the expense, if they should be paupers. Their settlement is first liable to refund it—if they have not any settlement it is to fall on the provincial treasury. Halifax town is exempted from this act's operation Regulations respecting inoculation are given in the same act.—(New measures on the subject of quarantine and contagion, are before the legislature.)

Amusements.

As there is nothing more calculated to benefit the health of body and mind than amusement moderately pursued; this subject is in some degree connected with the last. I have placed them together, as the provincial laws on both these subjects are designed to protect the moral and physical well being of individuals.

1. *Gaming.*—The provincial act of 1759. 33, G. 2. c. 1. 1, P. L. 46. contains a number of regulations to prevent gaming. It declares all public gaming, lotteries and public gaming tables to be nuisances, (section 1,) and empowers any two or more justices of the peace, to enter any house suspected of keeping gaming tables, and to direct their removal within 48 hours. If this order be disobeyed, the justices may "break and prostrate" the tables, and bind over the keepers, either to good behavior for 12 months, or for their appearance at the next Quarter Sessions, where on conviction they may be either fined or imprisoned. (Sec. 5.) The same act annuls all notes of hand or other securities, whether personal, or on real estate, which shall be given for money lost at play, or for bets on the game, or for money lent to the players (knowingly).

Real securities when given for such purposes, are transferred by the act to the benefit of the next heirs of the gamester, (Sec. 1.)

Sec. 2.—Entitles any person who shall lose above 20s. at one sitting or in 24 hours, to prosecute and recover the loss within a month, and a common informer may sue for the amount during the next month; one half to the prosecutor, and the rest to the poor of the town. Parents, guardians or masters, may sue for what minors have lost at play, by sec. 3.

Sec. 4.—Imposes a penalty of five times the amount on a fraudulent winner to be sued for, by any person who chooses.

Sports.—Sports, games, and pastimes, are forbidden to be used on the Lord's Day, and a fine of 10s. for each offence is incurred. Masters and parents are liable to this fine, if they suffer a servant or a child to transgress this law. Conviction must be on the oath of one credible witness, before a justice of the peace, or upon view of a justice. Act of 1761, 1, G. 3, c. 1, s. 2. 1, P. L. 65. See Ante. p. 188.

3. *Guns.*—Unnecessarily firing out of any "gun, musket, pistol, or other fire arm"—in any town, or the suburbs of any town, is made liable to fine of 10s. If the party has no effects to 24 hours imprisonment in the gaol. The fine may be imposed by one justice on the oath of a credible witness, and levied by warrant of distress: provided the complaint be made within 12 hours. Forfeitures half to the prosecutor and half to the government. Act of 1758, 32, G. 2, c. 25. 1, P. L. 37, extended by act of 1807, 48, G. 3, c. 21. 2, P. L. 22.

4. *Fire-works.*—The Provincial act, 2 G. 3, c. 4, 1 P. L. 79, passed in 1762, declares the manufacture of fire works unlawful and a nuisance, and imposes 40s. fine on

any person who shall make, give, expose to sale or sell them, or shall use them in any public place, or permit them to be used on their premises—recoverable before one justice—half to the poor and half to the informer The military commanders are excepted from the operation of the act, and so is the governor, and his subordinate officers. Bonfires are not to be made within 300 yards of buildings, stacks of hay or corn, under 40s. penalty. Sec. 4.

5. *Game.*—The provincial act of 1794. 34, G. 3. c. 4. 1, P. L. 333. for the preservation of partridges and blue winged ducks, amended by act of 1813. 53, G. 3. c. 16. 2, P. L. 113. forbids the killing of partridges between the first of March and the first of October, and the killing of blue winged ducks from the first of April to the first of August. 10s. fine is imposed for each offence, and the purchaser or possessor is equally liable to be fined. One justice may impose the fine on oath of a credible witness, or on confession of the offender, and it is to be levied with costs on the person or property of the party. The informer receives the whole fine. Indians and poor settlers may, notwithstanding, kill those birds for their own use, by sec. 3, act 1794. The act of 1816. 56, G. 3. c. 5. 2, P. L. 200. fixes a similar fine on the killing or obtaining snipes or woodcocks, between the first of March and first of September, under the same regulations and exemptions, as in the last mentioned acts. See laws respecting fishery, p. 151. 152

BOOK I.—CHAPTER X.

MILITIA AND BILLETING LAWS.

The last chapter related to the protection of health, this has for its object the protection of the community from foreign enemies. The sedentary militia comprises all the male inhabitants of the province, capable of bearing arms. It is regulated by annual acts of the assembly. The laws at present in force on the subject are the act of 1820, 1821, 1 & 2, G. 4, c. 2, 3 P. L. 73. of 1823, 4, G. 4, c. 4, 3 P. L. 147. of 1826, 7, G. 4, c. 16, 3 P. L. 261, act of 1828. 9, G. 4, c. 26, act of 1829, 10, G. 4, c. 39, and continuing act of 1830, 11, G. 4, c. 13. These acts regulate the militia. The act of 1808, 48, G. 3, c. 2, 2 P. L. 44, of 1811, 51 G. 3, c. 5, 2, P. L. 67, of 1813, 53, G. 3, c. 17, 2 P. L. 113, and continuing act of 11, G. 4, 1830, c. 17, direct the mode of billetting and accommodating the militia, and regulars, when marching in the province. The details of these acts are very numerous and minute, and they are calculated to meet any exigencies that may arise. At present however, the whole duty required is two days attendance, or a fine in compensation for absence. Every one between

16 and 60 if well, is bound to turn out. No one is obliged to travel further than 12 miles to the place of training. These laws provide against the infliction of severe military punishments, and they also forbid the commanders carrying militia out of the province, without their own consent.

Act of 1820, 3, P. L. 73.

Sec. 1.—Every resident from 16 to 60 years of age, (with certain exceptions) to be enrolled and serve in the militia of the place where he lives.

Sec. 2.—The militia to be divided into regiments by counties and districts, and these may be subdivided by the governor into batallions; batallions to consist of not less than 300, nor more than 800 men each, and a district to be set off for every battalion. Companies also are to be set off by districts for the convenience of assembling, except flank companies. A company to consist of not less than 30, nor more than 80 men, &c.

Sec. 5.—Directs that those who volunteer to serve in artillery or flank companies, must be enrolled for 5 years, and continue that term, unless they remove from the county or district, or are discharged by the commanding officer of the company.

Sec. 9.—Imposes 10s. fine on persons neglecting to enrol themselves in the militia company where they live, and 5s on youths arriving at the age of 16 who neglect to enrol themselves.

Sec. 10. If a dispute arises as to the age of a militia man, the burthen of proof lies upon the militia man.

Sec. 12.—Directs bonds to be given by militia men for the care of muskets, &c. when issued to them, in the penalty of £5.

Sec. 13.—Gives a fee of 1s. to be paid by the person giving such bond, of which sum half is to go to the clerk of the company, for filing up the bond, and the other half to the clerk of the peace for filing it.

Sec. 16.—Directs the captains to take charge of arms for such of their company as do not give bonds individually.

Sec. 18. Imposes 5s. a day fine on any person withholding such arms from the captain of the company, after training is over.

Sec. 19.—Directs a fine of L.5 on the lending, pledging, selling or embezzling a musket, and 10s for any other articles: the receiver made equally fineable, If carried away by water, L.10, recoverable before any one justice of peace. On non payment the justice may commit the offender 4 days for each fine of 10s. 40 days for a fine of L5. and 3 months for each fine of L.10, 1-4 to the informer, the residue to make good deficiencies and repair arms, &c.

Sec. 20.—On information on oath given of such offence, a justice may issue a warrant to arrest the accused.

Sec. 21. If the accused immediately restore the arms, &c. they shall be entitled to a remission of half the fine or imprisonment.

Sec. 22. The commander of a regiment or battalion may, as often as he thinks necessary, appoint an inspection of arms, &c. and the same penalties attach, if deficiencies appear as if they were at training.

Sec. 23.—Directs militia man leaving the province, or moving out of his company district to give up his arms, &c. to the commanding officer of the company, in good order, under L.5 penalty.

Sec. 25.—If a militia-man's arms or accoutrements, in the opinion of the captain or commanding officer of the company, are dirty and out of order at training or muster, he is liable to a fine from 2s. 6d. to. 10s.

Sec. 26.—Forbids the use of militia arms for fowling or other private purposes, under 5s. penalty for each offence.

Sec. 28.—Fine from 5s. to 20s. on improper conduct of militia-men on parade.

Sec. 33.—Any justice is bound to enforce the fines so imposed. Sec. 36.—Imposes 10s. fine on a militia-man neglecting to perform watch and ward duty, when regularly ordered. The same section exempts persons above 45 years of age from fines for non attendance at training. Sec. 37.—Entitles a militia-man to pay, when called on to perform watch and ward duty, above 6 days or nights in one year. Sec. 38.—Imposes £10 penalty on any who shall make a false alarm—to be sued for in any court of record—half to the informer—and half to the battalion Sec. 39.—Authorises the governor to draw from the treasury the amount of any expenses, that may attend on courts of inquiry for the trial of militia officers.

Sec. 40.—Exempts from the militia law, ministers of the gospel; and from musters and trainings, the following persons, *viz*: members of the council and assembly, judges, the attorney and solicitor general, justices of peace, sheriffs and coroners, the secretary, surveyor general and treasurer of this province, officers of the customs and excise and established waiters, the naval officers and his deputies, (an office now abolished,) physicians, surgeons, and attornies, clerks, storekeepers, and others actually employed in the civil and military departments of the army; constant ferrymen, licensed as such, one miller to each gristmill, postmasters and carriers actually appointed and employed as such, and Quakers duly certified by their society. All those exempted from training are to be at all times furnished with arms and ammunition, and to perform all other duties prescribed by this act, except members of the council, judges of the supreme court, the secretary of the province and quakers. Quakers are to pay each 20s. *per annum* for their exemption.

Sec. 41.—Empowers *the officer in command* at any muster or training *whether regiment, battalion, or company* is mustered or trained, *to commit* any non-commissioned officer or private, guilty of *drunkenness, contempt, disobedience or other*

misbehavior on the occasion, to the county jail for a space of time not exceding 3 *days, nor less than* 12 *hours, without bail or mainprize*, and prescribes the form of warrant for committal. The sheriff or jailor refusing to receive the prisoner is to forfeit £5 for each offence. Non-commissioned officer appointed to escort the prisoner, and not complying is to be reduced to the ranks and forfeit 40s. for each offence, and every private appointed to escort him, not complying, to forfeit 10s. (See sec. 8. of the act of 1828).

Sec. 42.—That there shall be an adjutant to each regiment or battalion, points out his duty and grants him £15 *per annum* for his services, to be drawn from the provincial treasury on the governor's warrant.

Sec. 43.—Imposes 40s. fine on refusal to act as sergeant, corporal, clerk, drummer or fifer, if appointed.

Sec. 44.—Prescribes an oath to be taken by clerks of companies, points out their duties, grants them 1-4 of all fines recovered, for their compensation, and exempts them from being drafted or ballotted for actual service.

Sec. 45.—Imposes a fine between 20s. and L.5, on a company clerk neglecting his duty, to be sued for by the officer commanding the company.

Sec. 46.—Prescribes the appointment of sergeant major, and clerk,—to each battalion.

Sec. 47.—Regulates the returns of strength of companies and regiments, accounts of fines, state of arms &c. twice a year.

Sec. 48.—Empowers the officers in command to confine any person wilfully interrupting the men in their exercise or duty, until the exercise or duty is ended, if necessary to prevent the continuance of the offence: and imposes 10s. fine for each offence.

Sec. 49.—Militia man unable to perform duty through sickness, accident or natural infirmity, is to complain to commanding officer of regiment or battalion. The colonel

or field officer is to order a board of one field officer and two captains, to inquire into and decide on the complaint. (See sec. 9. of act of 1828.) The certificate of a physician or surgeon, resident in the county or district, is to be obtained ; which is to be given *gratis*, under 40s. penalty. The board report their opinion after full consideration.—If this is in favor of the application, the commanding officer is to grant a certificate to that effect, which exempts the applicant from militia duty, while his disability continues ; medical man giving false certificate, liable to £10 fine.

Sec. 50.—Relates to conferences of the officers, and to their uniform.

Sec. 51.—Officers changing residence.

Sec. 52.—Cashiered officers, who are liable to duty as privates—same of officers resigning or dismissed.

Sec. 53 & 54.—Authorize the calling militia into actual service, on sudden emergencies.

From 55 to 81 inclusive, relate to drafts for actual service, and the rules then to be followed by the militia embodied. They are to receive pay equal to that of the regular army of Great Britain, are to be tried by their own officers—are not to suffer corporal punishment, except imprisonment, and not to suffer death except in cases of desertion to the enemy, mutiny and sedition, traitorous correspondence with the enemy or traitorous surrender of posts &c. The governor and council in case of invasion or imminent danger of it, may put in force select parts of the articles of war at their discretion, not contrary to the provincial law. No person can be put to death by virtue of a sentence of a militia court martial, without a warrant from the governor.

Sec. 82.—Appoints the duties of the quarter master of each battalion, and of the quarter master sergeant.

Sec. 85.—Supreme court on conviction before a jury, may fine up to the amount of L.20, any one accessary

to desertion of militia-man from actual service, and on non-payment, may commit offender to *close* imprisonment for a term not exceeding three months. Two justices of peace may convict for the same offence, but can only fine to L.5, liable on non-payment to close confinement for 20 days, or until fine and costs be discharged.

Sec. 86.—Limits actions against any person for what he may do in pursuance of this act to 3 months—and he may plead the general issue, and give the special matter in evidence.

Sec. 87.—Governor may order militia act to be read.

Sec. 88.—Governor may appoint inspecting field officers.

Sec. 89.—Governor may accept volunteers from the militia, for the defence of New-Brunswick,—but they are while on that service, to be subject to the militia laws of Nova-Scotia, and to none other.

Sec. 90.—Persons of color to form separate companies.

Sec. 91.—Fire engine men and firemen in Halifax, exempted from militia trainings.

Sec. 92.—Repeals all former acts on this subject, and 93 limits the law as an annual act.

The act 4, G. 4. c. 4. (1823.) 3, P. L. 148. by its 8th sec. exempts the servants of army and navy officers, receiving rations, from militia duty.

The act 7, G. 4. c. 16. (1826.) 3, P. L. 261.

Sec. 3.—Fixes the fines for non attendance at 10s. for the first day, and 20s. for the second—and makes the clerk of company's evidence valid in the prosecuting for these fines.

Sec. 4.—He who appeals from any fine under the militia law to a board of officers, must give notice in writing of his appeal, and the clerk must notify the appellant of the time of meeting of the board.

Sec. 5.—Commanding officer of regiment, battalion or

detachment, is to impose the fine for improper conduct of militia man on parade mentioned in sec. 28. of the act of 1823. 1 & 2, G. 4. c. 2. 3, P. L. 80.

Sec. 6.—Protects militia men attending muster or training, or going or returning, from arrest under civil process during the days of muster or training, and gives an action of damages against the officer who actually makes the arrest.

The act of 1828. 9, G. 4. c. 26. sec. 3. makes persons who neglect to enrol themselves liable to pay fines for the days of training &c. on which they should have attended, besides the fines for non-enrolment.

Sec. 4.—Directs the militia to be called out twice a year, and three days notice to be given to each militia man of the trainings &c.—notice on the field of the next day or days of training sufficient. Notice may be left at the house, or given in any reasonable way, and no excuse to be made as to the formality of the notice, if the party was aware of its having been given.

Sec. 5. Directs licensed ferrymen to transport officers or men going on militia duty free, of charge.

Sec. 6.—Authorizes the commanding officers of regts. or battalions as occasion may require to form boards of officers to determine the appeals of the men from fines, such a board must consist of 3 captains, or 1 field officer, and 2 captains, or 2 captains and 3 subalterns, or 1 captain and 4 subalterns.

Sec. 7.—Provides that justices of the peace shall have no fees for any service performed by them under the Militia law.

Sec. 8.—Extends the provisions of sec. 41, of the act of 1820, 1—1 & 2, G. 4, c. 2, 3, P. L. 82, to misconduct of the non commissioned officers and men, on all occasions of militia duty.

Sec. 9.—By this section the board mentioned in sec. 49, of act 1820, 3 P. L. 85, may consist of 2 captains and 3

subalterns, or one captain and 4 subalterns to enquire into excuses of sickness, &c.

Sec. 10.—All fines and forfeitures under the militia laws (under L.3) recoverable before any one justice of the peace, not an officer of the company in which such fine shall be incurred :—above L.3 and not exceeding L.5 before 2 justices of the peace, not officers of the company : above L5 in any of H. M. courts of record in the province, unless the recovery otherwise provided for by the act, limits all prosecutions to 3 months after offence, and directs the application of the proceeds, which after 1-4 deducted for recovering and collecting are to be paid to the quarter master, to be applied to contingent expenses of the battalion. &c.

Act of 10, G. 4, c. 39.

Sec. 2.—Exempts regularly licensed teachers and schoolmasters from militia duty.

Sec. 3.—Directs that no private militia man shall be compelled to travel to a training or militia meeting more than 12 miles from his place of abode. Most of the provisions of the militia laws not detailed in the foregoing outline are such as should be well understood by the commanding officers of regiments, and justices of the peace, who ought to be always furnished with complete copies of the militia acts, as they are frequently altered from year to year. The foregoing particulars embrace every thing on the subject in which readers in general are interested.

Billetting of Troops and Militia.

Act of 1808, 48, G. 3, c. 2, sec. 1. 2, P. L. 44. Whenever any of his Majesty's forces or militia are ordered to march from one district of the province to another, the justices of peace at or near the places through which they pass, are authorized to quarter them at "inns, taverns, and ale houses" for want of room in those, to quarter the re-

mainder in the houses of retailers of spirits and in the houses of persons who have kept an inn, tavern or ale house within a month before. They are to be furnished by the persons on whom they are thus billetted, with lodging and good and sufficient provisions of bread, flesh and vegetables, the commanding officers of detachments are to give receipts for the number of meals furnished. Each meal is to be paid for at the rate of 1s. 3d.* and every nights lodging at 3d. Any *militia* officer giving a certificate for a greater number of meals or lodgings, than actually furnished, is to be cashiered on conviction before a general court martial, and shall forfeit L.50 fine, recoverable in any court of record in the province, half to go to the informer, residue to the provincial treasury.

Sec. 2.—The governor with advice of the council is to draw on the provincial treasury, by warrants, for the amount of meals and lodging incurred by the militia forces on march. The governor is authorized to draw warrants on the treasury (not to exceed L.500 in one year) for the meals, (dinners only,) ordinarily incurred by his Majesty's regular troops, removed from one post to another by his order. The governor is authorized, with advice of council, to draw on the treasury, warrants not above L.150 in a year, for lodging money incurred by his Majesty's troops in march. See 2, P. L. p. 67.

Sec. 4.—In places where there is a deficiency of accommodation in public houses &c. the magistrates are empowered to billet part of detachments on other housekeepers, according to their discretion.

Sec. 5.—If horses, carts or waggons, are required to carry baggages, and any two justices of Peace for any County in the line of march, upon the application of the officer in command of the detachment, and exhibition of a route signed by the Governor to order them to be sup-

* Provincial Law, 2. v. p. 113.

plied, and determine what persons shall furnish them. Rate of compensation 1s. per mile for one horse and cart, with a suitable driver, to carry a load not exceeding 5 cwt. distance not to exceed 20 miles,—for each additional horse 9d. additional per mile; additional load not to exceed 5 cwt. for each additional horse. Detention at halting places by order of the officer in command to be paid for at 2s. 6d. per hour. The commanding officer is to give to give the owners or carriers, certificates of the weights, distances, and time and cause of detention, in conformity to which the owner is to receive immediate payment, from the officer in command of the detachment.

Sec. 6.—If the order of the two justices be disobeyed, (and no excuse made which shall be allowed by them as reasonable,) on the justices' complaint to the next general or quarter Sessions, that Court shall order the party complained of to be brought before them, and shall hear and determine the complaint. If convicted of a wilful disobedience, forfeiture 40s. to be levied by warrant of distress and sale of the goods and chattles of the offender, and to be paid to the commanding officer of the militia of the county or district. Officers forcing a waggon to travel more than 20 miles, or detaining it or overloading it improperly, or taking horses, or waggons or carts by force, are to forfeit 40s. and be liable for action of damages, at the suit of the party injured. Loaded waggons passing from town to town, and horses travelling for the owner, are not liable to be taken under the act.

Sec. 7.—Fines under this act are to go to contingent expenses of Militia. These acts for billeting troops and militia are annual, as well as the militia laws, and are continued every year by a bill. See 2 P. L. 44, 67, 113, and Act 11 G. 4, c. 17, 1830.

APPENDIX.

APPENDIX.

Page 26.—The instrumentality of the legislature of Massachusetts in planning the settlement at Halifax, and urging the crown to carry it into effect, is detailed by Governor Hutchinson; see his continuation p. 2. I have seen also a pamphlet published in 1748, by a Boston gentleman, in which the measure is forcibly recommended to government.

Page 45.—The act respecting passes requires also, that the creditor underwriting should make an affidavit of the debt in the secretary's office. These acts authorizes the secretary to depute persons in any part of the province to grant passes. Creditors underwriting must proceed to sue immediately. The act gives an action against persons groundlessly underwriting. Military persons having leave from the commander-in-chief, are exempt from the acts.

Pages 38, 43, 44.—It is asserted that the *habeas corpus* act was not extended to the plantations till the reign of Queen Anne. 1, Chalmers' political annals 74.

Pages 51, 64, 187.—It was very doubtful originally, whether any of the British penal laws on the subject of religion were legally in force in the colonies. The repeal of those acts, by the relief bill, seemed to leave no ground for their being acted on any longer here; but to prevent all doubts, his majesty's government recommended the passing an act in each colony. This was accordingly done here, by the act quoted at page 187, that refers to the oath given in the Imperial relief bill. I have therefore inserted the clauses of the statute containing the oath.

ANNO DECIMO, GEORGII IV. REGIS.

An Act for the relief of His Majesty's Roman Catholic Subjects.

[13th April, 1829.]

II. And be it enacted, That from and after the commencement of this Act it shall be lawful for any person professing the Roman Catholic religion, being a Peer, or who shall after the commencement of this Act be returned

as a Member of the House of Commons, to sit and vote in either House of Parliament respectively, being in all other respects duly qualified to sit and vote therein, upon taking and subscribing the following Oath, instead of the Oaths of Allegiance, Supremacy, and Abjuration:

'I A. B. do sincerely promise and swear, That I will 'be faithful and bear true Allegiance to His Majesty King 'George the Fourth, and will defend him to the utmost of 'my power against all conspiracies and attempts whatever, 'which shall be made against his person, crown or dignity; 'and I will do my utmost endeavour to disclose and make 'known to his Majesty, his Heirs and Successors, all Trea-'sons and traitorous conspiracies which may be formed 'against him or them: And I do faithfully promise to main-'tain, support and defend, to the utmost of my power, the 'succession of the Crown, which succession, by an Act, 'intituled *An Act for the further limitation of the Crown, and 'better securing the rights and liberties of the Subject*, is and 'stands limited to the Princess Sophia, Electress of Ha-'nover, and the Heirs of her body, being Protestants; 'hereby utterly renouncing and abjuring any obedience or 'allegiance unto any other person claiming or pretending 'a right to the Crown of this Realm: And I do further de-'clare, That it is not an Article of my Faith, and that I 'do renounce, reject and abjure the opinion, that Princes 'excommunicated or deprived by the Pope, or any other 'authority of the See of Rome, may be deposed or mur-'dered by their subjects, or by any person whatsoever: 'And I do declare, that I do not believe that the Pope of 'Rome, or any other foreign Prince, Prelate, Person, State 'or Potentate, hath or ought to have any temporal or civil 'jurisdiction, power, superiority or pre-eminence, directly 'or indirectly within this realm. I do swear that I will de-'fend to the utmost of my power the settlement of proper-'ty within this realm as established by the laws: And I do 'hereby disclaim, disavow and solemnly abjure, any in-'tention to subvert the present Church Establishment as 'settled by law within this realm: And I do solemnly 'swear that I will never exercise any privilege to which I 'am or may become entitled, to disturb or weaken the 'Protestant Religion or Protestant Government in the Uni-'ted Kingdom: And I do solemnly in the presence of 'God, profess, testify and declare, that I do make this De-'claration, and every part thereof, in the plain and ordina-'ry sense of the words of this oath, without any evasion,

'equivocation, or mental reservation whatsoever. So help 'me God.'

'III. And be it further enacted, That wherever, in the Oath hereby appointed and set forth, the name of his present Majesty is expressed or referred to, the name of the Sovereign of this Kingdom for the time being, by virtue of the Act for the further limitation of the Crown, and better securing of the rights and liberties of the Subject, shall be substituted from time to time with proper words of reference thereto.'

Pages 52, 56.—"Though the general court of Massachusetts had, as early as the year 1662, readily granted, "to a few French protestant refugees "liberty to inhabit "there;" yet the first act which occurs, of any colonial "assembly, for the naturalization of aliens, was passed in "Maryland, in May, 1666: and from the many similar "laws which were enatced in every subsequent session "till the Revolution (1688,) it appears that great numbers of foreigners transported themselves thither during that period." 1, Chalmers' political annals of the United Colonies, 315. The same author states (p. 316, 317,) that several governors "granted letters of denization to aliens, under the authority of which they trafficked contrary to law, and that the American courts of justice,"—"supported their pretensions in opposition to "the acts of navigation But their judgments were properly reversed, by the king in council, during the reign "of William; because a governor could not dispense with "an act of parliament." It was decided by C. J. North, "that a naturalization in Virginia, or in any other plantation is only local, not extending to any other colony," *Ibid.* 322. Journ. plantation off. 4. *v.* p. 27, 32, 34. See Craw and Ramsay. Vaughan's reports.

These acts are stated to have been "only intended to "enable them (naturalized aliens) to purchase land; but "not to qualify them to trade, or to be owners or masters "of ships." Ch. Pol. An. 322.

Page 96.—The governors were instructed to allow of no appeals from the general court, except to the king in council, as the assembly of Virginia had exercised a power of revising the sentences of that court. 1, Ch. Pol. An. 343. It was decided by King William 3, "that it was "equally the inherent right of the subject to prosecute "appeals, as of the Sovereign to receive them from the "colonies, without any reservation of charters." Record, Proprietaries. B. p. 353—5, 403. 1, Ch. Pol. An. 304.

P. 97.—" Sensible of the danger of innovations, and abhorrent from tampering in experiments of politics, I mention the following rather as a matter of speculation, than to recommend the trial: yet I cannot but observe, that while the constitutions of the governments of the Colonies take so exactly the model of the British constitution, it always struck me as a strange devition in this one particular, that the governor's council of state, although a distinct and I had almost said an incompatible board,—with the council, one branch of the Legislature, is yet always constituted of the same persons, in general nominated and liable to be suspended by the governor. One may see many advantages, besides the general conformity to the government of the mother country, in having these boards distinct in their persons, as well as their office. If the council of state remaining under the same constitution as at present, was composed of men of the best experience, fortune and interest in the colony, taken in common from the legislative council, the house of representatives, or the courts, while the members of the legislative council, independent of the Governor for their existence, had all and only those powers which are necessary to a branch of the legislature, much weight would be added to administration in the confidence and extent of interest that it would thereby obtain; and to the Legislature a more true and political distribution of power, which instead of the false and artificial lead, now held up by expedients, would throw the real and constitutional balance of power into the hands of government."—Governor Pownall's Administration of the Colonies, p. 85—87.

" A system has prevailed in some of H. M. Colonies, " which waving the matter of right, and adopted as one of " courtesy and convenience, has been attended with the " best effects. The House of Assembly precede every " Bill of this nature* by separate resolutions upon each " item,—these being sent up to the Council, are separate- " ly approved or rejected, and those which have been as- " sented to are subsequently embodied in a bill, and pass " of course.—Private despatch of the Colonial Secretary, Mr. Huskisson, to the Governor of Prince Edward Island, 30th Oct. 1827.

New enactments in this Session (1832) on subjects contained in this volume.—The session not having closed, I am not enabled to give an exact abstract of the changes. I pro-

* Money Bill.

pose to do so in a subsequent volume of this work. A brief outline of them may be desirable here, as the acts may not be published for some time.

General Assembly, page 63.—A bill increasing the number of members for the county of *Cape Breton*, from 2 to 3, and giving *one* member each, to the townships of Sydney and Arichat, in that county, has passed the council and assembly, and will probably become a law.

P. 173. *Licensed houses.*—The act of 1828, mentioned in the note to p. 173, is no longer in force. The new act which has now passed the house regulates licenses to sell liquor, as follows, viz :—*In Halifax*, there is to be but one description of license, authorizing liquor to be retailed down to the smallest quantities, and to be paid for it annually £10. The sessions are authorized in their discretion to grant tavern licenses to retail to country markets, in Halifax, at £3 *per annum*. Merchants are not at liberty to sell less than a whole package or cask of liquors as imported, unless they pay for retail licenses. *In the country, tavern licenses* to retail to be, as under the old regulations, at £3 *per annum*. Shop licenses in the country to be £5 *per annum*, but the holder of them is not at liberty to sell any quantity below a *quart*.

Pages 199, 206. *Common Schools.*—A new bill has passed the house, which again grants £4000 a year, for 3 ensuing years, subdivided among the counties exactly as was done by the act of 1828. (See p. 206.) It re-enacts also, as I understand, the regulations and provisions of the act of 1828, with little or no variation. It adds to these a provisions for *Grammar Schools* ; by which every school, district, that voluntarily raises a sum of £25, (beyond the provision for its common school,) for the purpose of a grammar school, in connection with the common school, is entitled to receive £25 provincial aid for the grammar school, besides the aid to its common school.—This is restricted however, to three such grammar schools in each county and district. The allowance in aid of these grammar schools is not to be deducted from the £4000.

Page 204. *Academy at Pictou.*—The questions long agitated respecting this seminary, have been happily set at rest, by a bill which has just passed both houses. It grants L.400 *per annum*, from 1832 to 1842, inclusive, to support the Academy. All religious tests and distinctions respecting the trustees, teachers, &c. are repealed. Of the old trustees, 7 are to remain in office, of whom Dr. M'Culloch, the founder of the institution is to be one.

Those who are to go out of office are to be fixed by the heretofore trustees, and they are to be considered honorary trustees. The governor is to name 4 new trustees; the bill appoints the Rev. Mr. Fraser, R. C. Bishop of Tanen, V. A. of this province, to be also a trustee; the 7 old and 5 new trustees to manage the institution. In case of a vacancy, the board are to nominate a new member, but the approbation and final appointment, in case of difference, is to rest with the governor. Dr. M'Culloch is to have L.250 *per annum* salary, and remain chief professor. No theological class is to be taught in the academy. A grammar school is also to be provided for out of the funds of the institution; in aid of which object, the house have granted the trustees at present the sum of L.400. These acts evince a greater attachment to education in the people of N. S. than has been manifested at any former period, and we may hope that this the dawning of a more enlightened system. A proposal to unite the Halifax and Windsor Colleges is before the Assembly.

Page 208. *Quarantine.*—From fears respecting the cholera, crossing the Atlantic, measures are before the assembly on this head. The provincial laws already enacted seem sufficient, if duly enforced, for all purposes of the kind, but the legislature has not yet decided whether they will add any new regulations.

A bill has passed compelling all persons selling goods by *auction* to take out an annual license, paying L.20 *per annum* for it.

There were one or two additional articles intended to be put in this appendix; but as their insertion would have caused a considerable delay in the appearance of this volume, I have postponed them to the next.

Errata.—Page 1, line 3, for *are* read *is*. P. 4, line 16, for *Viners'* read *Viner's*. P. 7, line 27, for *gae* read *age*. P. 29, line 15, for *settiements* read *settlements*. P. 51, line 14, for *polic* read *policy*. P. 54, line 6, for *seamen* read *seaman*. P. 66, line 22, dele '*of house*.' P. 69, line 28, for *take* read *takes*. P. 71, line 21, for *title of deeds* read *title deeds*. P. 84, line 22, for *house* read *throne*. P. 85, line 24, dele *took*. P. 148, line 15, dele *the*. P. 123, line 3, for *judicia* read *judicial*. P. 134, for p. 34, read 134. P. 151, line 3, for *preservatiou* read *preservation*. P. 151, line 32, for *find* read *fine*. P. 161, line 11, for *o* read *of*. P. 179, line 9, for *orther* read *other*.

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